(17,372.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 265.

FREDERICK A. BELL, PLAINTIFF IN ERROR,

vs.

MARY G. BELL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

INDEX.

	Original.	Print.
Case on appeal to court of appeals	*a*	1
Summons	1	1
Complaint	2	1
Answer	5	3
Reply	8	4
Bill of particulars	11	6
Order referring cause to Spencer Clinton, referee	12	6
Report of referee	12	7
Defendant's exceptions to findings of referee	17	9
Opinion of referee	19	10
Order confirming report of referee, &c.	23	12
Judgment of special term	24	13
Notice of appeal to general term	26	14
Evidence before the referee	26	14
Testimony of Edward B. Gridley	27	15
Henry C. Jewett	29	16
Lucy Jewett	29	16
Frank J. Doyle	30	16
Edward B. Gridley (recalled)	31	18

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 18, 1899.

	Original.	Print
Testimony of Maria Toomey	32	1
Annie Enright	34	1
Dr. Thomas Lothrop	39	2
George D. Barrett	40	2
Edward J. Futterer	41	2
Documentary evidence offered	42	2
Plaintiff's Exhibit "D"—Petition of Frederick A. Bell and Katharine B. Lewis to surrogate's court of Erie county, January 31, 1894	44	2
Testimony of Edward B. Gridley (recalled)	47	2
Exhibit A—Letter of F. A. Bell to "Mary," July 17, 1893	48	2
B—Letter of "Fred" to "Mary," July 5, 1891	49	2
Record of deed of F. A. Bell *et ux.* to Alfred Bell	51	2
Testimony of Charles Clifton	51	2
Plaintiff's Exhibit F—Record of decree of divorce in case of Benj. Bruce, Jr., *vs.* Mary Gridley Bruce	55	3
Further documentary evidence offered	59	3
Defendant's Exhibit 1—Notice and envelope in the Pennsylvania divorce proceeding, Frederick A. Bell *vs.* Mary G. Bell	60	3
Defendant's Exhibit 2—Notice and envelope in the Pennsylvania divorce proceeding, Frederick A. Bell *vs.* Mary G. Bell	61	3
Defendant's Exhibit 3—Record of the court of common pleas of Jefferson county, Pennsylvania, in case of Frederick A. Bell *vs.* Mary G. Bell	62	3
Docket entries	62	3
Petition or libel	64	3
Order granting subpœna	66	3
Subpœna	67	3
Sheriff's return	68	3
Motion for alias subpœna	68	3
Order granting alias subpœna	69	4
Alias subpœna	69	4
Sheriff's return	70	4
Motion for pluries subpœna	71	4
Order granting pluries subpœna	71	4
Pluries subpœna	72	4
Sheriff's return	73	4
Proof of publication	74	4
Motion for appointment of examiner	75	4
Order appointing examiner	76	4
Report of examiner	77	4
Decree	81	4
Certificates to record	82	4
Further offers of evidence	83	4
Section 1, chapter 40, of Revised Statutes of Illinois	84	4

	Original	Print.
Testimony of Edward M. Bell	84	49
Maggie Cashion	92	53
Ansley Wilcox	104	61
Frank A. Rodgers	105	61
Maria Toomay	107	63
Edward B. Gridley (recalled)	110	64
Mary G. Bell	110	64
Frank T. Williams	128	76
Referee's certificate to evidence	130	77
Stipulation as to correctness of record	130	77
Certificate of clerk of appellate division	131	77
Order of affirmance in appellate division	132	78
Judgment of appellate division	133	78
Opinion of appellate division	135	79
Notice of appeal to court of appeals	139	82
Clerk's certificates	140	82
Remittitur from court of appeals	142	83
Order for judgment on remittitur	144	84
Judgment on remittitur	146	84
Petition for writ of error	147	85
Assignment of errors	150	87
Bond on writ of error	152	88
Writ of error	155	90
Citation	157	91
Acceptance of service of citation	158	91
Stipulation as to record	159	91
Stipulations extending time to file record	160	92

a

Court of Appeals.

MARY G. BELL, Respondent,
against
FREDERICK A. BELL, Appellant.

Case.

Charles B. Wheeler, attorney for respondent, Buffalo.
Henry H. Seymour, attorney for appellant, Buffalo.

1

Supreme Court, Erie County.

MARY G. BELL, Plaintiff,
against
FREDERICK A. BELL, Defendant.

Action for Divorce.
Summons.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service: that in case of your failure to appear or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Dated December 10, 1894.

CHAS. B. WHEELER,
Plaintiff's Attorney.

Office and post-office address, No. 117 Erie Co. Savings Bank building, Buffalo, N. Y.

2

Supreme Court, Erie County.

MARY G. BELL, Plaintiff,
against
FREDERICK A. BELL, Defendant.

The complaint of the above named plaintiff respectfully shows, that on the 24th day of January, 1878, the plaintiff and the above-named defendant were married, at Bloomington, in the State of Illinois.

That this plaintiff is a resident of the State of New York.

And this plaintiff further alleges, upon her information and belief, that since said marriage was contracted and on and during the month of April, 1890, the defendant committed adultery with one May Martin, in the city of Buffalo, State of New York, at a certain hotel known as "The Genesee" house or hotel.

That during the month of May, 1890, at said Genesee house or hotel, in said city of Buffalo, in the State of New York, the defendant committed adultery with said May Martin, and that said defendant at various times during said months of April and May, 1890, committed adultery with said May Martin.

That at various dates, and during the years 1889 and 1890, the said defendant committed adultery with the said May Martin at a house known as No. 60 Irving place, in the city of Buffalo, in the State of New York.

That at various times and dates during the years 1883, 1884, 1885, 1886, 1887 and 1888, the said defendant committed adultery with the said May Martin, at the house commonly known as No. 191 Franklin street, in the city of Buffalo, in the State of New York.

3 That during the years 1883, 1884, 1885, 1887, 1889, 1890 and 1891, the said defendant was living in adulterous intercourse with the said May Martin, at the said city of Buffalo.

That during the year 1891, at the said Genesee house or hotel, in the said city of Buffalo, N. Y., the said defendant at various other times committed adultery with various other women, whose names are unknown to this plaintiff.

That the various acts of adultery hereinbefore set forth and charged, were committed without the consent, connivance, privity or procurement of this plaintiff.

That five years have not elapsed since the commencement of such adulterous intercourse was discovered by the plaintiff, and that such adulterous intercourse between the said defendant and the said May Martin was begun, and was continued without the consent, connivance, privity or procurement of the plaintiff, and that the plaintiff has not voluntarily cohabited with the defendant since the discovery thereof.

That as this plaintiff is informed and believes, and alleges the fact to be, the said defendant is a man of large means, and is possessed and the owner of a large estate of real and personal property, to the amount and value of several hundred thousand dollars, and is in the possession and enjoyment of a large annual income.

That this defendant has not in any way contributed toward the support of this plaintiff for upwards of eleven years.

That there have been no children born of the marriage of this plaintiff and the said defendant.

Wherefore, the plaintiff prays judgment, divorcing the said
4 plaintiff and the said defendant and dissolving the said marriage, and that the court may require said defendant to provide suitably for the support of this plaintiff, and that the plaintiff may have temporary alimony and the costs of this action, and for such other or different relief as may be proper.

CHAS. B. WHEELER,
Plaintiff's Attorney,
117 *Erie Co. Savings Bank, Buffalo, N. Y.*

STATE OF NEW YORK, }
County of Kings, City of Brooklyn, } *ss:*

Mary G. Bell, being duly sworn, deposes and says that she is the plaintiff named in the foregoing complaint. That she has read said complaint and knows the contents thereof, and that the same is true of her own knowledge, except as to the matters therein stated

to be alleged on information and belief, and as to those matters she believes it to be true.

MARY G. BELL.

Sworn to before me this 10th day of December, 1894.

CHARLES J. SANDS,
Notary Public, Kings County, N. Y.

5 Supreme Court, Erie County.

MARY G. BELL
against
FREDERICK A. BELL.

The said defendant, by Henry H. Seymour, his attorney, answering the complaint herein, alleges by his amended answer:

Admitting the marriage in said complaint alleged, denies each and every other allegation contained therein. And for further defense the said defendant alleges that at the times hereinafter mentioned the court of common pleas of Jefferson county, of the State of Pennsylvania, was a court of general jurisdiction duly created by the laws of that State. That on or about the 9th day of April, 1894, the defendant commenced an action in said court against said plaintiff for the dissolution of his said marriage with said plaintiff *a vinculo matrimoni*, by the issue of summons, which summons and notice or the process, by virtue of which by the laws of the State of Pennsylvania jurisdiction is obtained over the defendant in actions at law in said State, was duly served upon the plaintiff herein, and the said court of common pleas of Jefferson county had jurisdiction over the said plaintiff herein, as the defendant in that said action, or the pendency of which said action the plaintiff herein had personal and timely notice. That the hearing upon said action or the trial thereof was held in Brookville, in said county of Jefferson, in said State of Pennsylvania, on the 19th day of December, 1894, and such proceedings in said action were thereupon had; that said
6 court heretofore, on the 8th day of January, 1895, duly adjudged and decreed that the marriage of the parties hereto in this complaint alleged be dissolved, and said defendant recovered judgment in said court against the plaintiff herein, the said defendant herein, dissolving said marriage, and by a judgment and decree of the said court of common pleas of the county of Jefferson, and State of Pennsylvania, the marriage alleged in the complaint herein between the parties hereto was heretofore dissolved.

II.

And for a second defense and counter-claim the defendant alleges that on or about the 24th day of January, 1878, the defendant and said plaintiff were married at Bloomington, in the State of Illinois.

That the plaintiff and defendant were at the time of the commission of the first act of adultery hereinafter mentioned residents of this State.

And this defendant alleges, upon information and belief, that during the month of June, 1882, at the then residence of the plaintiff herein and this defendant, viz., number 641 Delaware avenue, in the city of Buffalo, this State, the plaintiff herein, Mary G. Bell, committed adultery with one Edward M. Bell. And defendant further alleges that between the first day of December, 1894, and the first day of April, 1895, said plaintiff, Mary G. Bell, at various times committed adultery in the cities of New York and Brooklyn with a certain man, whose name is unknown to defendant.

That there is no issue of said marriage of the said plaintiff and defendant, and that said defendant has not voluntarily cohabited with the plaintiff since the discovery of such adultery, and
7 that the same was committed without the consent, connivance, privity, or procurement of this defendant, and that five years have not elapsed since the discovery by the defendant of said adultery.

Wherefore, the defendant prays judgment, dissolving the said marriage between the defendant and plaintiff, and for such other relief as may be proper, besides the costs of this action.

HENRY H. SEYMOUR,
Defendant's Attorney, 11 *and* 12 *Hayen Building, Buffalo.*

NEW YORK COUNTY, *ss:*

Frederick A. Bell, the above-named defendant, being duly sworn, says that he has read the foregoing amended answer and knows the contents thereof; that the same is true to the knowledge of deponent, except as to those matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

F. A. BELL.

Sworn to before me this 3d day of April, 1895.
H. M. FLANNERY, No. 188,
Notary Public, New York County.

8 Supreme Court, Erie County.

MARY G. BELL, Plaintiff,
against
FREDERICK A. BELL, Defendant.

The plaintiff above named, for her reply to the alleged counterclaim of the defendant, set forth in the defendant's amended answer in this action, denies that in the month of June, 1882, or at any other time, at No. 641 Delaware avenue, in the city of Buffalo, or at any other time or place, this plaintiff committed adultery with one Edward M. Bell, or with any other person.

This plaintiff, further replying to said answer, denies, between the first day of December, 1894, and the first day of April, 1895, this plaintiff at various times committed adultery in the cities of New York and Brooklyn, with a certain man whose name is unknown

to the defendant, and this plaintiff denies that she ever at said times, or any other times, committed adultery with any man whosoever.

Second. And said plaintiff, further replying to said answer, alleges that she has no knowledge or information sufficient to form a belief as to whether or not the court of common pleas of Jefferson county, in the State of Pennsylvania, was or is a court of general jurisdiction, duly created by the laws of the State of Pennsylvania.

This plaintiff further alleges that she has no knowledge or information sufficient to form a belief as to what proceedings, if any, were had in said court by said defendant against this plain-
9 tiff, for the dissolution of his said marriage with this plaintiff, or as to whether or not any summons was ever issued out of said court against this plaintiff, or whether or not the hearing upon said action, or the trial thereof, was held in Brookville, in said county of Jefferson, on the 19th day of December, 1894, or whether or not on the 8th day of January, 1895, the said court purposed to render or enter any judgment dissolving the marriage between the plaintiff and said defendant.

This plaintiff, however, denies that any process whatever in said action, has been ever served on this plaintiff.

This plaintiff further alleges that she never was or ever became a resident or citizen of the State of Pennsylvania, and upon her information and belief alleges that said court of common pleas of Jefferson county, of the State of Pennsylvania, never had or obtained any jurisdiction whatsoever over this plaintiff, and never had nor acquired any jurisdiction, power, right or authority to make or render any judgment dissolving the marriage between this plaintiff and said defendant, and that any proceedings taken or judgment rendered in any such action was and is null and void, and of no force and effect.

Said plaintiff, further replying, alleges, upon her information and belief, that the said defendant never was or became a resident or citizen of the State of Pennsylvania, but that at all the times in the complaint herein mentioned, and at the time of the commencement of this action, was and continued to be a resident and citizen of the State of New York, and that any pretended proceedings taken by such defendant in said court were taken by said defendant for the purpose of evading the laws of the State of New York,
10 and were a fraud upon the rights of this plaintiff and upon the laws of the State of New York and of the State of Pennsylvania.

Wherefore, the plaintiff demands that said answer be dismissed.

CHAS. B. WHEELER,
Plaintiff's Attorney, No. 117 *Erie Co. Savings Bank Building, Buffalo, N. Y.*

STATE OF NEW YORK, } ss.:
County of New York, }

Mary G. Bell, being duly sworn, deposes and says, that she is the plaintiff named in the above-entitled action; that she has read the

foregoing reply and knows the contents thereof, and that the same is true of her own knowledge, except as to the matters therein stated to be alleged upon information, and as to those matters she believes the same to be true.

MARY G. BELL.

Sworn to before me this 6th day of April, 1895.

D. C. WHEARTY (223),
Notary Public, New York County.

11 Supreme Court, Erie County.

MARY G. BELL
against
FREDERICK A. BELL.

The following is the bill of particulars, upon information and belief, of the time and places of the acts of adultery alleged in the amended answer herein, of the said plaintiff, Mary G. Bell, between the first day of December, 1894, and the first day of April, 1895, viz: on or about December 25th, 1894, on or about January 1st, 1895, on or about March 24th, 1895, all at 101 Hancock street, in the city of Brooklyn, New York, and that said acts of adultery were committed by said Mary G. Bell with a man named George D. Barney.

HENRY H. SEYMOUR,
Defendant's Attorney, 11 and 12 Hayen Building, Buffalo.

To Charles B. Wheeler, plaintiff's attorney.

ERIE COUNTY, *ss:*

Frederick A. Bell, the above-named defendant, being duly sworn, says the foregoing is a correct bill of particulars of the time and places of the said acts of adultery alleged in the amended answer herein.

F. A. BELL.

Sworn to before me this 12th day of April, 1895.

F. E. EUSTAPHIEVE,
Notary Public.

12 At a special term of the supreme court, held at the city and county hall in the city of Buffalo, on the 9th day of May, 1895.

Present: Hon. Manly C. Green, justice.

MARY G. BELL, Plaintiff,
against
FREDERICK A. BELL, Defendant.

This cause being on the calendar of this court, and the attorneys for the respective parties having appeared in open court and consented to a reference, and the court having selected and named

Spencer Clinton, Esq., a counselor of this court, as a referee to hear, try and determine the issues herein:

Now, therefore, it is hereby ordered, that this action be and it hereby is, referred to said Spencer Clinton to hear, try and determine the same.

Supreme Court, Erie County.

MARY G. BELL, Plaintiff,
against
FREDERICK A. BELL, Defendant.

The undersigned was appointed a referee in this action by an order of this court made on the ninth day of May, 1895, to hear, try and determine the issues herein.

Both parties to the action appeared before me, in person and
13 by attorney, and having taken the oath of office required by law, I heard the testimony and evidence submitted by them and the arguments of their respective counsel thereon. From the evidence the following facts are found by me:

I. That the plaintiff was married to one Benjamin Bruce, Jr., at Bloomington, Illinois, on the 10th day of January, 1871; that on the 25th day of March, 1874, in an action in the circuit court of Cook county, Illinois, brought by said Benjamin Bruce, Jr., against the plaintiff under her then name of Mary Gridley Bruce, a judgment of divorce was granted, adjudging that the bonds of matrimony theretofore existing between said Benjamin Bruce, Jr., and the plaintiff be and the same were thereby dissolved.

II. That subsequently and on the 24th day of January, 1878, the plaintiff and defendant were married at Bloomington, Illinois, and went to Rochester, N. Y., to reside.

III. That a year or two later the plaintiff and defendant came to Buffalo, N. Y., to live. During the latter part of their married life they resided on Delaware avenue in this city. Their residence was a very fine one and they kept horses, carriages, coachman and servants.

IV. In August, 1882, the plaintiff went to Bloomington, Illinois, on a visit to her mother. In her absence the defendant packed up her wearing apparel and other property in trunks and had them removed to the stable preparatory to sending them to the plaintiff at Bloomington. In September the plaintiff, accompanied by her mother, returned to the defendant's house, stayed for three of four days and then left, accompanied by her mother, for Bloomington,
Illinois, and since then the plaintiff and defendant have not
14 lived together. The plaintiff has remained at Bloomington, living with her mother. She has crossed the Atlantic three times, on one occasion remaining thirteen months. Each time she returned to Bloomington. On the 14th day of November, 1894, the plaintiff left Bloomington, with her mother, going to 101 Hancock street, Brooklyn, N. Y. On her way she visited Mr. and Mrs. Henry C. Jewett, at Buffalo, N. Y., and while there told Mrs. Jewett that she was on her way to Brooklyn and intended to bring an

action against the defendant for a divorce. She lived at 101 Hancock street, Brooklyn, till March 28th, 1895, when she took up her residence at the Cambridge hotel, corner of 23d street and Fifth avenue, New York city. She has not returned to Bloomington, Illinois, since then. During all of this period the plaintiff has claimed her residence as being at Buffalo, N. Y., and in a deed she executed with him, a deed of certain lands wherein she is described as of Buffalo, N. Y.; she has never resided in Pennsylvania.

V. This action was begun on the 22d day of December, 1894, by the personal service of the summons and complaint on the defendant at the city of Buffalo, N. Y., the plaintiff then being a resident of the State of New York.

VI. That on the 8th day of January, 1895, the court of common pleas of the county of Jefferson, in the State of Pennsylvania, in an action pending therein, brought by the defendant, Frederick A. Bell, against the plaintiff, Mary G. Bell, for a divorce on the ground of her desertion of him, rendered its judgment or decree against the plaintiff dissolving their marriage for her desertion of the defendant. That desertion, under the laws of the State of Pennsylvania, was a ground for dissolving marriage.

15 VII. That the subpœna in said action, by which it was commenced according to the law of Pennsylvania, was not personally served upon the defendant in that action, who is the plaintiff in this action, but she was served by publication according to the laws of Pennsylvania. She did not appear in that action in person or by attorney, and judgment was rendered against her by default. She received through the mail a printed copy of the subpœna and of the notice of the examiner that he would attend to the duties of his appointment at his office on the 4th day of December, 1894, at his office on Main street, in the borough of Brookville, Jefferson county, Pennsylvania. That at the time of the rendering of the judgment the plaintiff in this action was a resident of the State of New York.

That on the 31st day of January, 1894, the defendant and his sister, Katherine B. Lewis, presented a petition to the surrogate of Erie county for the probate of the will of Juliette Bell, their mother. That in such petition the defendant is described as residing in the county of Erie, New York, and his residence is given as Buffalo, N. Y. The petition is sworn to by the defendant and his sister.

VIII. The defendant was not a *bona fide* resident of the State of Pennsylvania at the time of the beginning of the action to dissolve the marriage between the plaintiff and defendant, nor at the time of the making of the judgment or decree therein.

IX. The plaintiff inherited a fortune of about $100,000 from her father, and it is now about the same amount.

X. That the defendant possesses property to the amount of
16 $300,000 situate in this State and Pennsylvania. That the income from most of the Pennsylvania property varies according to the demand for, and price of coal, as it is based upon coal mines and mining rights. There was no dividend paid last year on the stock of the Bell-Lewis Mining Company. That the

plaintiff has an estate separate from that of her husband of about $100,000.

XI. That the defendant committed adultery with one Mrs. Martin in the month of April, 1890, at the Genesee hotel in the city of Buffalo, New York. That Mrs. Martin lived for a week in the defendant's rooms in the hotel, in which rooms there was but one bed.

XII. That on another and different occasion, in the month of May, 1890, the defendant committed adultery with Mrs. Martin in her room in the Genesee hotel in the city of Buffalo, New York.

XIII. That these acts of adultery were committed without the consent, connivance, privity or procurement of the plaintiff.

XIV. That five years have not elapsed since the commission of said acts of adultery before the commencement of this action, and the plaintiff has not cohabited with the defendant since said adultery was committed.

XV. That the plaintiff did not commit adultery with one Edward M. Bell, nor with any other person at any time.

I find as conclusions of law that the plaintiff should have judgment against the defendant dissolving the marriage existing between the parties for the adulterous acts of the defendant.

II. That the defendant pay to the plaintiff for her support
17 and maintenance during her life the sum of three thousand dollars per annum, from the commencement of this action, payable quarterly.

I direct that judgment be entered accordingly, with costs to be paid by the defendant to the plaintiff.

(Signed) SPENCER CLINTON, *Referee.*

Dated June 8th, 1895.

Supreme Court, Erie County.

MARY G. BELL, Plaintiff,
against
FREDERICK A. BELL, Defendant.

The defendant herein excepts to the findings of fact and the conclusions of law of the referee herein upon the trial of this action, and gives notice thereof as follows:

1. The defendant excepts to the fourth finding of fact and the whole thereof.

2. The defendant excepts to the fifth finding of fact and the whole thereof.

3. The defendant excepts to the seventh finding of fact and the whole thereof, and especially to the finding that at the time of the rendering of the judgment the plaintiff in this action was a resident of the State of New York.

4. The defendant excepts to the eighth finding of fact and the whole thereof.

5. The defendant excepts to the tenth finding of fact and the whole thereof.

18 6. The defendant excepts to the eleventh finding of fact and the whole thereof.

7. The defendant excepts to the twelfth finding of fact and the whole thereof.

8. The defendant excepts to the thirteenth finding of fact and the whole thereof.

9. The defendant excepts to the fourteenth finding of fact and the whole thereof.

10. The defendant excepts to the ruling contained in the first conclusion of law and the whole thereof.

11. The defendant excepts to the ruling contained in the second conclusion of law and the whole thereof.

12. The defendant excepts to the ruling that judgment be entered in favor of the plaintiff against the defendant, with costs.

HENRY H. SEYMOUR,
Attorney for Defendant, 11 *and* 12 *Hayen Building, Buffalo.*

To Charles B. Wheeler, Esq., attorney for plaintiff, Buffalo:

Take notice, that the foregoing exceptions are taken from the findings and rulings of the referee, as contained in the decision of said referee in the above-entitled action, and that said exceptions are this day filed in the clerk's office of Erie county.

Dated July 5th, 1895.

HENRY H. SEYMOUR,
Defendant's Attorney, 11 *and* 12 *Hayen Building, Buffalo.*

19 Supreme Court, Erie County.

MARY G. BELL, Plaintiff,
against
FREDERICK A. BELL, Defendant.

Memorandum of Opinion.

I have given this case very careful consideration upon the law and the facts.

The defendant was a resident of New York and the plaintiff a resident of Illinois when they married in the latter State in 1878. Subsequently they came to Buffalo, where they resided until their separation in 1882, when the plaintiff returned to Illinois. Subsequently she returned to this State with the avowed purpose of bringing this suit for divorce. While domiciled here the defendant brought an action in a court of Pennsylvania for a divorce from the plaintiff, on the ground of her desertion of him. The defendant claimed a residence in Pennsylvania, but such residence could have been but nominal, as he at the same time claimed to be a resident of this State in proceedings in a surrogate's court here. No evidence was offered to show that the defendant actually changed his domicile from this State to that of Pennsylvania. The plaintiff had notice of the action, but did not appear in it or take any part

in it. In that action a decree was rendered dissolving the marriage between the parties, for the desertion of the defendant by the plaintiff. That decree was offered in evidence before me.

It can have no force in changing the relations of the parties. The uniform course of decisions by the courts of our State forbid my giving any force to this decree.

20 The evidence of the commission of acts of adultery by the defendant with Mrs. Martin appears conclusive to me. The testimony of Annie Enright, a chambermaid at the Genesee, shows that Mrs. Martin, in April, 1890, passed a week in the defendant's rooms, taking her meals there and appearing in her night-gown. This is corroborated by the witness Barrett, who testifies that there was a woman there at Mr. Bell's rooms for a week or ten days.

The witness Enright also saw the defendant enter Mrs. Martin's room in the Genesee one Saturday night in May, 1890, and come out in the morning. He had not left the room when she went off duty at midnight.

This testimony is direct. It is weakened to a certain extent by the bias Annie Enright may have, because of having been accused falsely of stealing jewelry belonging to Mr. Bell, and by having brought an action against him for damage, which failed. The high character given Mrs. Wisner and Mrs. Martin by Dr. Lothrop detracts from it, and the testimony of Mr. Rodgers, keeper of the Genesee, that Mrs. Martin, when unaccompanied by Mrs. Wisner, always requested him to accompany her to Mr. Bell's rooms, and that he stayed there until she left.

But Mr. Rodgers was not asked about the time when Mrs. Martin stayed in the hotel, first in the defendant's rooms and afterwards with Mrs. Wisner. Nor did the defendant deny this evidence of the witness Enright, as the law permitted him to do. I can come to no other conclusion from the evidence than that the acts of adultery were committed as stated in my findings of fact.

The counter-charge made by the defendant is not sustained by the evidence. The testimony of Mr. Edward M. Bell standing alone is not sufficient. The testimony relied upon to corroborate it does not fill the requirement of the law. Edward M. Bell fixed the

21 date as being the last of May or first of June. At that time plaintiff was not in Buffalo.

There are other minor contradictions which require that his testimony should be corroborated fully within the rules of law before the plaintiff should be found guilty of being unfaithful to her marriage vows. All the circumstances of this case require that the testimony of Mr. Edward M. Bell should be carefully weighed and that its corroboration should be upon some material point. The only corroboration is that he visited the house in Mr. Bell's absence; that Mrs. Bell was intimate enough with him to call him "Ned" and to accept his escort to the theater; that she was in good spirits upon occasion when they popped corn in the kitchen, and that on one occasion he spent the night at the house. This latter date is not fixed and the testimony goes to show that it was not at the time Mr. Edward M. Bell fixes as the time when the offense was

committed. I do not regard this as sufficient corroboration to entitle me to accept his testimony in view of the explicit denial of the plaintiff, and I am constrained from all the evidence to find that the plaintiff is not guilty of the offense charged in the answer.

The remaining question to be passed upon is that of alimony. The facts established before me are comparatively meager. The plaintiff is apparently in good circumstances; her fortune independent of her husband is about $100,000. Mr. Bell's fortune has not been established very definitely. It appears that he received from his father's estate—

The sum of	$140,414 35
From his mother's estate	61,150 00
He has stock in the coal company	312,500 00
Merchandise in partnership	40,000 00
	$554,064 35

22 What part, if any, of the stock in the coal company represents the amount, or any part of it, received from his father's estate does not appear. It does appear that last year the firm or company suffered a loss of $200,000. He receives rents to the amount of $7,200 from Pennsylvania coal interests, but how these enter into the copartnership dealings of Bell & Lewis, if at all, does not appear. From all the testimony I am inclined to estimate his fortune at $300,000, the greater part of it invested in coal-mining ventures. These interests are at present very much depressed and are necessarily at the mercy of the fluctuation of the business of the part of the country which they supply with coal. For this reason the fortune of the defendant should not be treated as one of a definite amount, producing a fixed income, when it is to be burdened with a fixed charge such as an allowance for alimony would be.

Looking, then, to the circumstances of both parties with a view to do equal justice to both, I am of opinion that three thousand dollars per annum should be paid the plaintiff for alimony.

Dated June 8th, 1895.

SPENCER CLINTON, *Referee.*

23 At a special term of the supreme court, held at the city and county hall, in the city of Buffalo, in the county of Erie, on the 24th day of June, 1895.

Present: Hon. John S. Lambert, justice.

MARY G. BELL, Plaintiff,
against
FREDERICK A. BELL, Defendant.

Upon reading and filing the report of Spencer Clinton, Esq., referee herein, heretofore appointed to hear, try and determine the issues in this action, which report bears date the 8th day of June, 1895, and all the papers and proceedings herein; after hearing

Charles B. Wheeler, Esq., counsel for the plaintiff, in support of this motion, and Henry H. Seymour, Esq., in opposition thereto:

On motion of Charles B. Wheeler, attorney for the plaintiff, it is ordered, that the said report of the said referee be and the same hereby is in all things confirmed, and that the plaintiff have judgment for the relief demanded in the complaint, in accordance with the directions of said report.

And it further appearing that said defendant intends to appeal to the general term of this court from the said judgment upon application of defendant's counsel, it is further ordered, that the execution of the judgment hereby authorized and directed, so far as the payment of alimony may be directed or provided therein, be stayed during the pendency of the said appeal to the general term, with leave to the defendant to again move at this court for a further stay in the event that the decision of the general term shall
24 be a-verse to said defendant, and necessary in order to protect his rights under the circumstances surrounding the case.

And it is further ordered, that if the defendant fails to diligently prosecute his said appeal, or take all the steps necessary to a decision thereof, that then the plaintiff may apply to this court for an order vacating the stay hereby given in reference to the payment of alimony.

Supreme Court, Erie County.

MARY G. BELL, Plaintiff,
against
FREDERICK A. BELL, Defendant. } Judgment.

This action having been begun by the personal service of the summons and complaint in this action on the defendant, Frederick A. Bell, and the said defendant having appeared and answered said complaint, and the issues so framed having, by an order of this court dated the 9th day of May, 1895, been referred to Spencer Clinton, Esq., as sole referee, to hear, try and determine the same, and said issues having been tried before said referee, and the said referee having made and filed his report, bearing date the 8th day of June, 1895, in and by which report said referee found, among other things, that said defendant committed adultery with one Mrs. Martin, and that said plaintiff has not committed adultery with any one. And this court having, by an order of the Erie special term, dated the 24th day of June, 1895, confirmed said report and directed judgment to be entered accordingly:

Now, therefore, on motion of Charles B. Wheeler, Esq.,
25 attorney for the said plaintiff, it is ordered, adjudged and decreed, that the marriage between the plaintiff, Mary G. Bell, and the defendant, Frederick A. Bell, be dissolved, and the same is hereby dissolved, accordingly, for the adulteries of the said defendant, and the said parties are, and each of them is, freed from the obligations thereof.

And it is further ordered, adjudged and decreed that it shall be lawful for the said Mary G. Bell, the plaintiff, to marry again in

the same manner as if the said Frederick A. Bell, the defendant, was actually dead, but it shall not be lawful for the defendant, Frederick A. Bell, to marry again until the said plaintiff, Mary G. Bell, shall be actually dead, or until the further permission of this court, made pursuant to the statute in such case made and provided.

It is further ordered, adjudged and decreed, that the defendant, Frederick A. Bell, shall pay to the said plaintiff, Mary G. Bell, the sum of three thousand dollars ($3,000.00) per annum during the natural life of the said Mary G. Bell, as and for her support and maintenance, such payments to begin from the 22d day of December, 1894, and to be paid in quarterly installments of seven hundred and fifty dollars ($750.00) each, at the end of every three months.

And it is further ordered, adjudged and decreed, that said plaintiff recover of and from said defendant, Frederick A. Bell, the sum of four hundred and thirty-five dollars and ninety-four cents ($435.94), as and for her costs of this action, and that the plaintiff have execution therefor.

Judgment signed this 3d day of July, 1895.

GEORGE BINGHAM, *Clerk.*

26 Supreme Court, Erie County.

MARY G. BELL, Plaintiff,
against
FREDERICK A. BELL, Defendant.

SIR: Take notice, that the defendant, Frederick A. Bell, hereby appeals to the general term of this court from the judgment of this court, which said judgment was entered in this action on the third day of July, 1895, in the office of the clerk of the county of Erie, and that the said defendant hereby appeals from the whole and every part of said judgment.

Dated August 1st, 1895.

Yours, etc.,
HENRY H. SEYMOUR,
Attorney for Defendant and Appellant,
11 *and* 12 *Hayen Building, Buffalo.*

To Charles B. Wheeler, attorney for plaintiff and respondent, and to the clerk of the county of Erie.

Supreme Court, Erie County.

MARY G. BELL, Respondent,
against
FREDERICK A. BELL, Appellant.

The parties and their counsel appeared before the referee, Spencer Clinton, at his office, in the city of Buffalo, on the 16th day of May, 1895. Mr. Charles B. Wheeler appeared as counsel for the plaintiff, Mr. Henry H. Seymour as counsel for the defendant.

27 EDWARD B. GRIDLEY, being duly sworn, testified:

I reside in Bloomington, Ill. Am a brother of Mrs. Bell, 41 years old; my sister is 44; I was present at the marriage of Mr. and Mrs. Bell, on January 24th, 1878, at Bloomington, Ill., at the residence of her father and mother, on Grove street. After their marriage they lived a year or two at Rochester, N. Y., then I think they went to Buffalo, where they lived on Delaware avenue. I remember the occasion of their separation; I remember Mrs. Bell going to Bloomington shortly before that; I think it was the year 1882; she stayed there a short time before she went back to Buffalo; she came for a visit and she received his letters and went back with mother to Buffalo; she returned to Bloomington a short time after that with her mother; she brought her trunk with her when she came home. After that Mrs. Bell lived in Bloomington with her mother up to the present time; during part of this time she has crossed the Atlantic three times; on one trip she was gone thirteen months; I forget how long she was gone the others; from that time she has not lived at all with Mr. Bell; I have not had any knowledge of his contributing to her support in any way; I remember when she went to Brooklyn; she left Bloomington with her mother on November 14th, 1894; she first went to 101 Hancock street, Brooklyn, and was there until March 28th, 1895; she then took up her residence at the Cambridge hotel, 33d street and 5th avenue; she has not been in Bloomington at all since November 14th, 1894; she never was a resident of the State of Pennsylvania; I have had charge of her property and her business matters, and charge of the payment of her taxes; I have made a yearly return to the assessors there during the ten or twelve years since her separation
28 from her husband, for the purpose of taxation of personal property, under her direction. Mrs. Bell has made declarations in reference to her residence, to me.

Q. State what those are?

Objected to by defendant's counsel as incompetent. Objection overruled. Defendant excepts.

A. Her residence was in Buffalo, N. Y.

Cross-examination by Mr. SEYMOUR:

Mrs. Bell returned to Bloomington in 1882, and with the exception of her trips abroad she lived there until November 14th, 1894; she has been abroad three times in that period; the first time she was abroad she remained thirteen months, the second time for nearly a year, and I think the other time was not quite so long; she paid her expenses on these trips out of her separate estate, left her by her father; at the time of her marriage to Mr. Bell she was a single woman; she had been married before to Benjamin Bruce, about ten years before her marriage to Mr. Bell; Mr. and Mrs. Bruce lived together between three and four years at Chicago.

Redirect examination by Mr. WHEELER.

By the REFEREE:

Q. During this period that Mrs. Bell was living in Illinois, did she, to your knowledge, execute any papers, deeds of conveyance, or anything of that kind in connection with the estate?

A. None that I remember.

Q. So you don't know how she described herself in any deed or paper that she executed?

A. I do.

Q. In what way did she describe herself?

A. As Mrs. F. A. Bell, Buffalo, N. Y.

Q. Invariably declaring that to be her residence?

A. Yes, sir.

29 Mr. SEYMOUR: I object to that and move to strike it out, on the ground that the papers themselves are the best evidence.

Objection overruled. Defendant excepts.

HENRY C. JEWETT, sworn, testified:

I live on my farm at Jewettville, N. Y.; I have known Mrs. Bell a number of years, after her separation from Mr. Bell; I remember that she visited at my house at Jewettville with her mother last fall, when she stayed four or five days; she left November 21st; she went to 101 Hancock street, Brooklyn; after that I saw her at the Park Avenue hotel, when she came to visit my wife for four or five days.

LUCY JEWETT, sworn, testified:

I am the wife of the last witness; I have known Mrs. Bell thirteen years; I remember when she visited me last fall at Jewettville; she stayed four or five days and left the 21st of November; she went to 101 Hancock street, Brooklyn; I have corresponded with her there; addressed letters to her there and received replies; I afterwards saw her in New York; she visited me at the Park Avenue hotel on my invitation. Her mother, Mrs. Gridley, was with her. I was acquainted with her while they lived on Delaware avenue; they kept horses and carriages and a coachman, and their house was a fine place; it was what I would call a luxurious home.

Cross-examination by Mr. SEYMOUR:

When Mrs. Bell visited me she told me she was going to Brooklyn; she said that she was going to stay with her relatives there, and that she was going to enter proceedings against Mr. Bell for a divorce.

30 FRANK J. DOYLE, sworn as a witness for the plaintiff, testified:

I live in Schenectady, and am employed by the General Electric Company as a winder. I was employed at the Genesee hotel, in this city as a porter, and afterwards as head hall man, under the

management of Rogers & Roy. It was about four years ago. I am a married man. I know Mr. Bell. I have no recollection of ever seeing Mrs. Bell before. I had occasion to answer calls from rooms. Mr. Bell was living there at the time. I remember the rooms he occupied. They were at the extreme end of the hall, on the second or third floor. He had a suite of rooms. I was there about a year. I remember one occasion when I saw a woman in his rooms. A woman called and asked to be shown to Mr. Bell's room. I went to Mr. Bell's room and told him. She afterwards left, and three or four days after I admitted her; she walked by me, was taken up in the elevator, and about two o'clock in the afternoon I saw this lady come downstairs and go out. About a week after this I saw this same party come back. I opened the door for her; she came in and walked upstairs. It was in the afternoon. I followed, and she went to Mr. Bell's room, and knocked on the door. I was at the other end of the hall. She was not admitted. She waited there two or three minutes, and then she came downstairs and sat in the parlor, perhaps twenty minutes. In the meantime Mr. Bell came in, and walked or rode upstairs. I went upstairs and saw this lady come out of the parlor and go to third floor. She walked down to end of hall and entered Mr. Bell's room. I did not see her come out. She was about average height and fair complexion. I would call her a blonde. I do not know her name. On another occasion I answered the bell from Mr. Bell's room in the
31 morning about eight o'clock, or nine; I went to the door; it was ajar; I knocked, but no one answered. I saw no one, but I heard some person speaking, and I supposed it was Mr. Bell, and I went in and turned to the right, his apartments were around to the right, and I said, "Did you ring?" and a female voice said, "Is that you, Fred?" I said, "No, it is one of the bell boys." There was no reply. So I went back to the door, and met Mr. Bell at the door. He was not fully dressed, and I judge was just out of the toilet-room, and he gave orders for some wants and went into the room. I went after them. I think they were drinks of some kind. I brought them up and served them, and saw a woman sitting in one of the outside rooms, near the closet, with a wrapper, or morning gown, on. She was not dressed in street costume. I saw this lady come out that afternoon about four o'clock. She was the same woman I had seen on prior occasions. On no other occasion have I seen this party in Mr. Bell's room, but I have seen her come in frequently and go upstairs, and remain upstairs some time. I don't know where she was.

Cross-examination by Mr. SEYMOUR:

The cross-examination of this witness showed that he had been employed at the Genesee as head hall boy and head hall man for two years, and before that he was employed a year and a half at the Mansion house as a porter.

I first heard about this action about three weeks or a month ago, from a representative of Mr. Wheeler's, by the name of Futterer, who used to be bell boy.

EDWARD B. GRIDLEY, recalled by the defendant, and cross-examined by Mr. Seymour:

At the time of the marriage of the parties hereto, in 1878,
32 Mr. Bruce, the first husband of the plaintiff, was living; my father died January 21st, 1881; I am the trustee of the plaintiff's separate estate now; my father did not leave an estate of half a million; I should think that that estimate is about one hundred thousand dollars out of the way; the greater part of the estate was farm lands near the city of Bloomington, which have increased somewhat in value; my father left four children, who inherited the estate in about equal shares. Under the laws of Illinois, if a resident makes a return to the assessors that they are not residents of that State, it exempts them from the tax upon their personal estate there; the plaintiff has lived in Bloomington since 1882, with the exception of the time she has been abroad; when she has gone abroad she has gone from Bloomington, and when she has returned from Europe, she has returned to Bloomington.

MARIA TOOMEY, sworn, testified for the plaintiff:

I live in Buffalo and was employed in the family of Mrs. Bell, as a domestic, when they lived at 641 Delaware avenue; I was employed there in May, 1882, as second girl; I remember the time that Mr. and Mrs. Bell separated; I remember Mrs. Bell's going to Bloomington; she went first to see her mother; she returned in a week or so; when she went she left a note for Mr. Bell, saying she was going to her mother's. While she was at Bloomington he packed up Mrs. Bell's things and sent them out to the barn; and some men came and packed up her piano; after these things were packed up Mrs. Bell came back with her mother; she stayed about three or four days and then left.

Cross-examination by Mr. SEYMOUR:

I think it was about the first part of September when she came back; I supposed she had been gone about a week or so, so
33 when she went the first time, it was about the end of August; she left a note for Mr. Bell, for to give it to him, to tell him she was going; I gave it to Mr. Bell; he was away when she left; I don't remember how many days he had been away, but I guess he came back about the second day after she went. When she left she said to me that she was going to her mother's, and when Mr. Bell came back to give him this note. About a week after that she came back with her mother. Mr. Bell was there. She stayed three or four days, as near as I can remember; then she and her mother went away together. Mrs. Bell bade us good-bye; she shook hands with us and said good-bye.

Q. Did she say she was coming back?

A. She never said she was coming back.

Q. Did she say she was coming back?

A. I don't remember she made use of them words. We knew she was going away.

Q. For good?
A. Yes, sir.
Q. Why?
A. I saw her things all packed up, and, of course, I knew by her actions she was going away.
Q. Do you recall whether she said anything to you about going away for good?
A. I guess she did. We all knew it, anyway, that she was going away for good.
Q. Did you know from her actions and conduct?
A. Why, certainly, I do believe Mrs. Bell told us she was going away, and we could see it ourselves.
Q. See if you can remember whether she did tell you that she was going away for good?
A. That is my recollection. That I knew distinctly that she was going away for good.
Q. That she told you?
A. Yes, sir.

Redirect by Mr. WHEELER:

Mr. Bell packed up her things before she came back, and moved them out into the stable.

34 ANNIE ENRIGHT, sworn for plaintiff, testified:

I live with Mrs. A. P. Wright now. Prior to that time I lived at Mrs. Jewett Richmond's. I was a chambermaid at the Genesee hotel and had charge of the third floor. I know Mr. Bell. He boarded at the hotel at that time. I was there a year. Mr. Bell had a suite of rooms on the third floor. I had care of his rooms as chambermaid. Mr. Bell had a front parlor, a back parlor, a bedroom, a bath-room and a closet. They were down at the end, towards Pearl street, at end of hall. I left there five years ago in June. He had just one bed in his suite of apartments. I know a woman known as Mrs. Martin. She called herself Mrs. Martin. I know a woman who calls herself Mrs. Wisner. I remember a time when Mrs. Martin came to the hotel and stayed in Mr. Bell's rooms. The first time I ever saw her come there was in April, the last April I was there. She and Mrs. Wisner came there, and the bell boy came up to my room and wanted the key of Mr. Bell's room to let two women in his room. I did not give it to the bell boy. Mr. Bell was in there at the time. I went downstairs and met them on the third floor. She said it was all right, she was Mr. Bell's friend, and Mrs. Wisner said she was Mr. Bell's cousin, and I should not feel afraid to give her the key. I said "No," and she says, "Come and let us in." I went down, and before that she said Mr. Lewis had sent her a note to give to Mr. Bell (Mrs. Martin said) so I went on down. The door was locked and I could not get in. She called, but got no answer, and she sat on a chair, and she said she would watch, and the next bell boy that would come up she would get in. I did not see any more of her until the next morning. She called me to the door the next morn-

ing. I did not see her go in. I went off about my business.
35 She said she was going to set there until a bell boy would come up and she would get in. The next morning at the door she called me, and wanted some towels, and I got her the towels, and then she told me how she got in. When she came to the door she was dressed in a night-gown. After that I could hear her in the room but could not see her. She stayed in the room just one week. I saw her go out. I was called and went down, and Mr. Bell said he was leaving his room, and that he wanted his bed all changed with clean linen. Then afterwards Mr. Bell went in, and he came out and linked arms, to the elevator, with Mrs. Martin, walked arm in arm to the elevator, and gave me directions to change the bed. I went into the room and done my work. I never saw the woman before. She is a low-set, light person. Mrs. Wisner was a small, little low person, with bright blue eyes and dressed in black. In May she came to stay in rooms in front of elevator. They stayed a couple of weeks at that time. Mrs. Martin never went down to her meals that I know of; I always seen the tray brought up, and meals taken in. She was there in April and in May. She and Mrs. Wisner came back to board in these other rooms. They had two rooms in the same hall as Mr. Bell's were. His were at the end of the hall and theirs opposite the elevator. On the second occasion I saw Mr. Bell go into Mrs. Martin's rooms. It was Saturday evening when I was on watch. I think I was on watch from three to twelve. I saw him go into her room between eight and nine when I was in the hall. I did not see him come out that night. On Sunday morning a bell boy was looking for—some one rang him. I was in the next room with Minnie Conners, and he came to see, or wanted to know who was ringing him. Minnie said "In the next room." This was the forenoon
36 of Sunday. Mr. Bell came to the door and said they were not ringing. I saw him come out of the room that day. Three or four of us were sitting on the step and we just happened to see him go down to his own room. I saw Mrs. Martin on another occasion go once in his room in the evening, going down herself. Yes, I seen her with Mr. Bell, going down to his room, a good while after that. They went in. I did not see her come out. Mrs. Martin was in there once while I was doing his work. She came and looked through his bureau drawers, looked over his closet. There were night shirts on the box she said should be in the drawers, and she fixed them in the drawers. I don't remember seeing her in his room after that day. I saw other women go in his room. It was in March; in February I seen different faces going out. I did not see the people going in, but I saw them going out, more than I did going in. I saw them going in and coming out as I was doing my work from one room to another. There was one woman, she was a light blonde, and real light. I saw her come out, and I saw her on the floor early in the morning when I went to my work. One of the bell boys run up. They had a great deal of loud talking and he came out and said they had lots of fun. His name was Thompson. He went downstairs. Mr.

Rogers came up and rapped at the door, but could not get in. Then the elevator boy came up with a note and they left.

Q. Was there any other?

A. Well, there was a light woman in 284. If I am not mistaken in the number, the next room to Mr. Bell's. She came there occasionally, and used to make inquiries about him. I saw her go into his room. The last time she was there she came up and said she wanted to go into Mr. Bell's room. She walked in. She occupied the room right next to Mr. Bell's three or four times. I took care of her room. In June I found a night-dress in Mr.
37 Bell's room, the very same I had seen in her room. I found it on his bed, and a little silver flask that had been in her room. I saw it several days in her room.

Cross examination by Mr. SEYMOUR:

At the time Mr. Bell came out of the room arm in arm with the woman that I call Mrs. Martin, was, as near as I can remember, on Wednesday; she came on a Wednesday and I think she left Wednesday about ten o'clock in the morning, at end of week; afterwards, when Mrs. Martin and Mrs. Wisner came there, they took a suite of rooms together down by the elevator; they had a large and small bed-room; I was there on watch one night and saw Mr. Bell come along there, in the early evening; I was coming up about my business around by the elevator; I was on watch in the lower hall on the first floor; I am the Annie Enright that was arrested at the Genesee.

Q. By the police force?

A. No, by Mr. Bell; I had his own words for it.

Q. You were arrested by Mr. Bell?

A. Yes, sir.

Q. What for?

A. For, well, as he said, I stole a thousand dollars' worth of jewelry and a pair of boots and an umbrella, as near as I can remember.

Q. Were you arrested by an officer?

A. Quinn, I think they called the detective that came there.

Q. Were you arrested by Mr. Quinn?

A. I don't know whether I was arrested, he was——

Q I don't mean to suggest that you were arrested. I ask you if you were not taken in charge. You had trouble there with Mr. Bell?

A. Yes, sir.

Q. And it was stated that Mr. Bell had lost valuable jewelry, wasn't it?

A. Yes, sir.

Q. And he thought somebody had taken it, didn't he?

A. He thought I had taken it.

38 Q. He was mistaken, wasn't he?

A. Yes, sir. I went with Officer Quinn to the station I was kept there, as near as I can remember, from half past three

or four until the next morning, when I was allowed to go; I afterwards sued Mr. Bell for having me arrested and accusing me of taking all of his jewelry and stolen goods; in this action I claimed ten thousand dollars' damages; it was brought in the supreme court, and it was tried twice; the first time the jury did not agree and the second time the court directed a nonsuit.

Q. As a result of the lawsuit, your feelings toward Mr. Bell are not very friendly, are they?

A. Well, I don't think he acted very gentlemanly toward me.

Q. Your watch lasted from what hours to what hours?

A. Well, from three to twelve that night, if I am sure, or else from six to twelve; it is a good while ago, and I am trying to remember it as near as I can; the duties of chambermaid on watch are to sit in a chair; they change the beds and are supposed to go around and change the rooms; when they are on watch and not changing the rooms they are usually sitting at some one point; my station was the same as all the rest, the first floor, back hall, or the side hall; the side hall faces Huron street; as the halls run there, you go up in the elevator and you face on Genesee street; then you walk the whole length of the hall down Genesee street until you come to a hall which runs at right angles from Genesee street down towards Huron street, and at the end of that hall I was stationed, facing Huron street; when I was there it was facing the Morgan building right in that hall; my station was on the first floor: I know the woman's name was Mrs. Martin, because she told me so the day she came to attend to Mr. Bell; she said her name was Miss Mary Martin and that she had a note from Mr. Lewis,
Mr. Bell's brother-in-law; she said she had a note to come
39 and see Mr. Bell and stay with him until he got well; she said she always did: he was in his room and I don't know what was the matter with him; the first visit from Mrs. Martin was in the year that I was arrested; I was arrested the 16th or June; this was about the middle of April in 1890, I guess; all these occurrences I testified to were about the middle of April and in May; I know it was the May month when she was there.

Upon redirect examination, witness testified:

I saw drinks going in there quite often during the day, six or eight times, as near as I can remember; when I was arrested I was tried in police court and honorably discharged.

Dr. THOMAS LOTHROP, sworn, testified for the plaintiff:

I am a practicing physician; I know Mr. Bell; I know Mrs. H. A. Wisner; I know Mrs. Martin; they are patients of mine; I remember their living at one time in Irving place; I have seen Mr. Bell at the house; I don't remember how many times I saw him there; I don't keep these things in my mind for four, five or six years after they pass; I can't say whether I saw him there more than once or not; Mrs. Wisner was there and Mrs. Martin, another patient of mine, and a servant; I don't remember the year; a few years ago; I remember their moving away, I should say four or five years ago; I do not know where Mrs. Martin is now; I have forwarded some letters to her, two or three weeks ago, I think, to Philadelphia.

Cross-examination by Mr. SEYMOUR:

I didn't suppose there was any one questioned the high character of Mrs. Wisner; I have known her thirty-five years; she has been a patient of mine thirty-five years and she is from one of the very best families, a woman of exceptionally high character, an exceptionally fine woman from one of our oldest Buffalo families; I never heard the character of Mrs. Martin questioned; I always supposed Mrs. Martin to be a most excellent woman; all that I know of her is good, exceptionally good.

Redirect examination by Mr. WHEELER:

I do not know the fact that the neighbors at Irving place protested against their remaining in the neighborhood on account of their relations to Mr. Bell; I don't know that it was owing to that fact that they had to get out; that is not my business; I don't know anything about it; all I know about these people is good; all I know is, professionally, they were patients of mine; I had not heard it discussed up there among the neighbors.

GEORGE D. BARRETT, sworn for plaintiff, testified:

I am physical director for the Young Men's Christian Association; I was employed as a bell boy at the Genesee hotel under Mr. Rogers as proprietor; I know Mr. Bell; he boarded at the hotel; I left in February or March, 1890; I had occasion to go to Mr. Bell's room to answer bell calls; I remember where it was; I have seen women in his rooms at different times; sometimes in morning, sometimes in the evening; I have seen women there at eight in the morning, and I guess as late as between eight and perhaps ten or twelve; I don't remember definitely, of course; we went to answer bells and answered them in turns, and when it came my turn I went, and at times to Mr. Bell's room, generally in response to calls; I always knocked; Mr. Bell most always opened the door, and when he opened it I could see into the sitting-room; I have seen more than one person in there at different times; I don't think I can describe the personal appearance of them; I remember seeing one there who either had brown or black hair, dark complexion; as near as I can remember she was a medium-sized woman; I remember one time Mr. Bell was sick and there was a woman there for some time; and at other times there were some others there; by sick I mean intoxicated; he had been on a spree for some time; I don't know this woman I saw was doing anything; she was moving around; I could not tell the date; I remember seeing her there a number of times, because I think she was there a week or ten days at one time that I have reference to: I took at the time, to the room, such things as a person would need in the hotel, ice water, perhaps sandwiches, or drinks of some kind; I remember taking drinks there; I have seen a woman there quite late in the evening; as late as eleven; I don't know but twelve; these women were fully dressed with one exception, viz: I remember one occasion when I saw a woman in Mr. Bell's room without a waist on, bare arms and

low neck, corsets; I mean she did not have the waist of her dress on; that was in the morning, if I recollect; she was in the first room you come to when you step in.

EDWARD J. FUTTERER, sworn for the plaintiff, testified:

I live at 149 Elmwood avenue, and am a designer in woodwork, clay modeling, carving; I know Mr. Bell; I was employed at the Genesee in the check-room, and answered the bell, and went up to Mr. Bell's room and rapped at the door, and a lady came to the door, and she told me to get a pitcher of water; I got the water and returned it to her; it was between nine and ten; I don't
42 remember how she was dressed; she was between twenty-two or three, and could have been twenty-nine or thirty; as far as I know she was more light than dark.

Mr. WHEELER: I want to introduce in evidence some records bearing upon the question of alimony. I first offer in evidence the petition and affidavit in the matter of the probate of the will of Alfred Bell, a certified copy of the records from the office of the surrogate of Monroe county. The first is the petition to the surrogate of the county of Monroe, signed and verified by Julie Bell and Frederick A. Bell, and Catherine N. Lewis, also an affidavit by Mr. Bell as to the value of the estate in the State of New York; also the will and certificate of probate. The amount of the estate, according to the affidavit of F. A. Bell, who states in the affidavit he is the executor named in the last will and testament of Alfred Bell, deceased, who died August 24th, 1892, in Rochester, N. Y., and that he died seized of one piece of real estate in the State of New York, being a house and lot number 255 East avenue, in the city of Rochester, and that said real estate is fairly worth the sum of $50,000.00; that deceased died possessed of personal property consisting of furniture, fixtures, horses and carriages, bonds and mortgages, stocks, moneys, etc., situate in the State of New York, of the value of $462,039.61, and then comes the will and the certificate of probate showing how the property was divided; it gave one-third to each.

Mr. SEYMOUR: I object to it upon the ground that it is not conclusive against Mr. Bell as to what the value of the share was that came to him; there may have been an accounting, and he may have owed the estate for advanced money, and may not have
43 received anything under it; on the further ground that it is incompetent and immaterial.

Objection overruled. Defendant excepts. Papers received in evidence and marked Plaintiff's Exhibit "C."

Mr. WHEELER: I also offer in evidence the petition for the probate of the will of Julie Bell, the mother of the defendant, certified in the surrogate's office in the county of Erie, signed and verified by Mr. Bell and his sister, Mrs. Lewis, in which they state that the value of the estate, the real property at $45,000, and the personal property at $62,300.

Defendant's counsel objected to the record in evidence on the grounds last above stated.

Mr. WHEELER: There is fifteen thousand dollars of the property

left to other people, and the balance of the estate is divided among the two children.

The petition for the probate of the will received in evidence, and marked Plaintiff's Exhibit "D," and the will of Julia Bell received in evidence and marked Plaintiff's Exhibit "E."

Exception *to* defendant on the ruling of the referee admitting them in evidence.

Mr. WHEELER: I also offer in evidence certified copy of the decree fixing the value of the property under the will of the defendant's father, subject to the inheritance tax. Mr. Bell, the defendant, was a party to that proceeding. I have here an exemplified copy of the record from the office of the surrogate of Monroe county.

Defendant's counsel objected to the admission of the record in evidence on the grounds above stated. Objection overruled. Defendant excepts.

44 PLAINTIFF'S EXHIBIT "D."

Surrogate's Court, Erie County, New York.

In the Matter of Proving the Last Will and Testament of JULIETT BELL, Deceased.

To the surrogate's court of the said county of Erie:

The petition of Frederick A. Bell and Katharine B. Lewis, residing at the ——, in the said county of Erie, respectfully shows:

Your petitioners allege that Juliett Bell, late of the city of Buffalo, in said county of Erie, died in said city of Buffalo, on or about the 10th day of December, 1893, and that the said decedent was, at the time of her death, a resident of the said county of Erie:

Your petitioners further allege, upon information and belief, that the said decedent died seized of real property valued at $45,000, and possessed of personal property valued at $62,300.

Your petitioners further allege that the said decedent left a last will and testament, bearing date the 10th day of December, 1892, executed as prescribed by the laws of this State, and relating to the real and personal property, and nominating and appointing your petitioners, Frederick A. Bell and Katharine B. Lewis, executors thereof, and that no previous application has been made for the probate of said will.

And your petitioners further allege, upon information and belief, that the only heirs and next of kin of said decedent her surviving, and all the persons in being who would take an interest in any portion of said real and personal property, under the provis-
45 ions of said last will and testament, and the executors and trustees named or described therein, and their respective ages, relationship, places of residence and post-office addresses are as follows:

Name.	Age.	Relationship.	Residence and post-office address.
Frederick A. Bell.....	47	Son	Buffalo, N. Y. } Petitioners.
Katharine B. Lewis ...	45	Daughter ..	Buffalo, N. Y. }
Sarah A. Conniff.....	48	Niece	Jacksonville, Duval county, Florida.
John H. Dibble	34	Nephew ...	Norman, Oklahoma.
Charles H. Dibble.....	36	Nephew ..	Norman, Oklahoma.

And your petitioners further allege, upon information and belief, that all the above-named persons are of sound mind.

Wherefore, your petitioners pray that said last will and testament be admitted to probate, and established as and for the last will and testament of said testatrix, valid to pass real and personal property, that said heirs and next of kin of said decedent her surviving, and all the persons in being who would take an interest in any portion of said real and personal property, under the provisions of said last will and testament, and the executors and trustees named and described therein, be cited to attend the probate thereof; that letters testamentary issue to the executors in said will named, and that all such process and proceedings may be had and taken in this proceeding for that purpose, as the law may require.

Dated this 31st day of January, 1894.

F. A. BELL.
KATHARINE B. LEWIS.

46 STATE OF NEW YORK, } ss.:
Erie County, City of Buffalo, }

Frederick A. Bell and Katharine B. Lewis, being severally duly sworn, say that they have read the foregoing petition by them subscribed, and know the contents thereof, and that the same is true to the knowledge of the deponents, except as to matters therein stated to be alleged on information and belief, and that as to those matters they believe it to be true.

F. A. BELL.
KATHARINE B. LEWIS.

Subscribed and sworn to before me, this 31st day of January, 1894.

WALTER P. COOKE.

STATE OF NEW YORK, } ss.:
Erie County, City of Buffalo, }

We, Frederick A. Bell and Katharine B. Lewis, do swear that we are the executors named in the last will and testament of Juliett Bell, late of the city of Buffalo, in said county of Erie, deceased; that we are citizens of the United States, residents of the city of Buffalo, in said county of Erie, upwards of the age of twenty-one years, and that we will well, faithfully and honestly discharge the duties of executors of and under the said last will and testament.

FREDERICK A. BELL.
KATHARINE B. LEWIS.

Subscribed and sworn to before me, this 31st day of January, 1894.

WALTER P. COOKE,
Notary Public.

47 STATE OF NEW YORK, } ss:
County of Erie, Surrogate's Court, }

I, John J. Griffin, clerk of the surrogate's court of the said county of Erie, do hereby certify that I have compared the foregoing and annexed copy of petition, probate of will and oath of executors in the matter of the probate of the will of Juliett Bell, deceased, with the original record thereof now remaining in this office, and have found the same to be a correct transcript therefrom, and of the whole of such original record.

In witness whereof I have hereto set my hand and [SEAL.] affixed the seal of said surrogate's court, at Buffalo, N. Y., this 29th day of March, 1895.

JOHN J. GRIFFIN,
Clerk of Surrogate's Court.

None of said Exhibits "C," "D" and "E," or above decree, fixing the value of the property, were read before or after being offered in evidence, until the summing up by plaintiff's counsel.

EDWARD B. GRIDLEY recalled for plaintiff.

Q. Did your sister have a divorce from her former husband?

Mr. SEYMOUR: I object to that on the ground that the decree is the best evidence.

Mr. WHEELER: I suppose we can get it?

Mr. WHEELER: I desire now to read in evidence the letters. Exhibits "A" and "B."

Mr. SEYMOUR: I have no objection to their being read.

48 Plaintiff's counsel then read Exhibit "A," which is as follows:

BUFFALO, N. Y., *July 17th*, 1893.

MARY: Early in May last I sent Mr. Seymour of this city to see you, to discuss with you the advisability of your taking some steps looking to the termination of the marriage relation existing between us, and also for the purpose of giving you the determination I had arrived at. I have been waiting since our separation, in the hope that you would of your own volition take some measures looking to that end, believing that it would be better for you in all respects to initiate such proceedings rather than force me to do so, as a woman's status is always much better to be a complainant than defendant in such actions, and I had hoped that after reflection you might come to see it as I do. Not hearing from you in any way, I am constrained to write you, giving you my position from my standpoint, in a manly and kindly way, with the full intention to begin an action if you do not. Of course, Mary, by this time any hopes of any reconciliation between us, as far as our being any more to each other than we are at present, must by you have been aban-

doned, and now should come to us our future, and what there may be in life left to us. To sustain the relations that exist any further is doing an injustice to both, and keeping up a pretense of what is not real, only so far as the legal bond is concerned, while for you in your own home, surrounded by your family, friends, and without care, your life is completely free from the almost unendurable conditions that surround mine, and it is this false position which I desire to do away with, and to put myself before the world in such shape that I will not be misconstrued, nor my condition be a matter of further unfavorable comment, and what is true of my condition is largely so of yours. I have
49 given this matter a great deal of careful thought, and it does seem to me that we are doing ourselves great injustice in sustaining the relation now existing, when there is nothing but the law that binds us, and, believe me, it was entirely out of consideration for you, and with the hope that I might be able to make something out of my life also, and with no impertinent curiosity, that I sent Mr. Seymour to you. I am now writing you on the same subject, to express to you my conclusion, and at the same time, if you are so disposed, the opportunity to take the initiative, which, from my standpoint, it is wiser and better for you to do. I am also fully decided that if you do not do so, it only remains for me — take the matter in my own hands. I fully recognize that by law you are my wife, and from this fact is due the consideration I want to extend, with the alternative offered.

Yours truly, F. A. BELL.

Also Exhibit "B," which is as follows:

BUFFALO, N. Y., *July* 5, 1891.

MARY: I have yours of the first inst., and think perhaps, in justice to you, as well as myself, I should reply. I have also received the several letters you have heretofore written me, but have not answered them, because I could see no good that could come to either of us by so doing. With me it only brings up unpleasant memories of the past and associations that I have striven to forget ever existed, and which, Mary, can never be renewed. My love for you is a thing of the past, dead and buried, and can never be revived. My life is in some respects, of course, a complete failure, and yet in others it is a fair success. I have no home and none of those domestic relations the interest in and responsibilities
50 of which go so far to develop a man or a woman, in the fuller sense of manhood and womanhood. My sole interests now seem to center in my parents, Kate and Alfie, and in my business, and in the care and attention I give to them comes the relief from the wasted other side of my life. I cannot say that I am happy, neither am I miserable. I try to philosophize, and in the cares and duties of the present to forget the troubles of the past. I cannot admit either that I am a "total wreck," as some good friend would seem to intimate to you. I am somewhat independent in my thoughts and actions, and do not allow outsiders to dictate what I

shall or shall not do, but hold myself responsible for my own deeds, and think I have some very good friends yet. My feelings toward you are not hard. I have gotten over that. I was at first, but time and absence have seemed to run away with that feeling, and in its place has come one of indifference. I know I loved you when I married you, but have ceased to give you credit for ever having cared much for me, and that policy dictated your marriage rather than love. But be that as it may, it is all over now, and we have only to make the best of what the future may have in store for us. I certainly can only wish your life to be as happy as you can make it, and if the forming of other ties would in any way bring about a better condition of things for you, don't let me for one moment stand in the way. I will not oppose any separation that is not based on dishonorable ground, and in saying this I am not speaking for myself, for another marriage is the very last thing I should ever contemplate. A woman's life is, however, different from a man's. She is much more dependent, and should from any cause your mother be taken away, you to an extent would be quite alone in the world. I am glad to know that she is so well and trust she may be spared
51 to you for many years. I have not written as I have, Mary, with any motive of unkindness or from any wish to save hard feelings. Those feelings are all gone, and I feel in my heart as perfectly free from you as if I had never known you, only realizing that by law we are held together. I think we would both be happier were that bond dissolved, but I shall most certainly leave the matter to do with as you may deem best. Your letter I thought demanded a frank, honest reply from me, and that you were entitled to know my true feelings toward you, and have only thought to be plain and straightforward with you.

FRED.

Mr. WHEELER: I also offer in evidence the following records:

"Frederick A. Bell and Mary G. Bell, his wife, to Alfred Bell, a deed of conveyance of real estate on Delaware avenue, being about 235 feet front by 174 feet deep, dated November 17th, 1883, and recorded in Liber 463 of Deeds, at page 62. Consideration expressed is $47,500.00." This deed recites that both the grantors are residents of Buffalo. I offer this as bearing upon the question of the amount of property, and also the residence of the parties.

It is agreed between counsel that the decree of divorce by the Illinois supreme court, of the plaintiff from her former husband, may be offered in evidence at the close of the defendant's case.

CHARLES CLIFTON, called for plaintiff, testified:

I live in Buffalo and am treasurer of the Bell, Lewis & Yates Coal Mining Company. Their principal office is at Reynoldsville, Pa.; I am stationed in Buffalo; the books are kept here in the general office in Buffalo; I am secretary and treasurer and have been since its organization in June, 1887. The firm of Bell, Lewis &
52 Yates had operated this business and several other branches; the coal mining company succeeded to the coal mining busi-

ness only; that branch of the business was put into a corporation and I am its secretary and treasurer; they own mines, both own and operate mines; they own the three mines at Reynoldsville and two mines at Falls Creek; one is called the Rochester mine; it is at Falls Creek; also the Sandy Lick mine, but I don't think that has been operated much in a year; at Reynoldsville we have the Silver Run, Hamilton and Sprague; the company owns some of the fee of the property back of the Silver Run mines; as a rule we buy the coal rights; we buy the coal in the mine, so much per acre; in other cases we mine on a royalty; what we take out at the Rochester and Sandy Lick mines we operate on a royalty to the owners of the property; we pay royalty to the estate of Alfred Bell; what comes principally out of the Rochester mines we pay by the ton; I might approximate the number of tons we took out; it was about 300,000 tons; the year before it was pretty near 400,000 tons, and the year before we had a falling off; we paid to the Bell estate eight cents a ton; I should say sixty per cent. of the output of the Rochester mine went to the estate of Alfred Bell; there are no other mines where royalty is paid to the Alfred Bell estate; never paid any to Bell personally.

The capital of the mining company is $1,000,000; I have charge of the stock book as secretary; Mr. Bell owns 3,325 shares; that would be $335,000 at par value; I know the firm of Bell & Lewis; it is composed of Mr. Fred Bell and Mr. George H. Lewis; they have various enterprises in common, some of them of an investment character and some a merchandise character; they run some mining stores at the mining properties; they have three stores, one
53 at Reynoldsville, one at Dubois and one at the town of Roth more; they furnish miners' supplies, groceries, a general store; in the neighborhood of 1,600 miners are employed; then they have stock investments and property investments of various sorts; they have an interest in a mine at Falls Creek known as the London mine and a small mine at Reynoldsville known as the Sherwood mine.

The properties owned by Bell & Lewis are on leases to the mining company; the mining company operates them; in a general supervisory sense as far as book-keeping is concerned, I have to do with the offices of Bell & Lewis; there is no capital in a book keeper's sense; the books are not opened in that way; the books were simply a continuance of the old firm of Bell, Lewis & Yates because at the dissolution of that firm, owing to the insolvency of Mr. Yates, they were continued; I have knowledge of the book value of the property; I don't pretend to know the actual value upon the books; the merchandise stock that is carried runs somewhere between $30,000 and $50,000, according to the time of the year; that is entirely irrespective of the mining interests; I know of no other enterprises Mr. Bell is interested in; the mining company issued bonds, the bulk of which is owned by Mr. Lewis.

Cross-examination by Mr. SEYMOUR:

The amount of shares Mr. Bell owns is $3,125, instead of $3,350; the Bell, Lewis & Yates Co. did not declare any dividend last year; none of these companies in which I have described Mr. Bell as being interested declared any dividends last year or the year before; there was a small profit, a relative profit in the general merchandise stores, in the neighborhood of $20,000, on 1894.

54 Redirect examination by Mr. WHEELER:

In the past years it has been larger. I can't tell what it was in 1893; I should think it was $30,000, but not as high as $40,000. The mining company declared no dividend, but they made a profit in their mining operations; they had certain obligations to meet, which they used the profits to liquidate instead of declaring dividends; we had improvements to make and all that sort of thing; I think the profits of the mining business for the last year would warrant the declaration, ordinarily, of 6 per cent. The year before there was a deficit, a heavy deficit that year, owing to bad debts; that was the year 1893; the year before that I can simply swear to the fact that there was a dividend of 6 per cent. in 1892; there was a dividend declared the year before that; the business, as it has run from year to year, has been profitable; the stock is valuable stock; it has a value; I think it is worth par.

Recross-examination by Mr. SEYMOUR:

The deficit in 1893 was in round numbers about fifty thousand dollars; indirectly in a large part this was owing to the financial embarrassment of Mr. Yates. It was a serious year financially, and aside from what we lost indirectly on Mr. Yates we made a good many bad debts; it was a black year; at the time of the failure of Mr. Yates, in March or April, 1893, he was indebted, either directly or by means of guaranteeing certain paper, to the extent of $323,000 to the coal mining company; in consideration of certain property, in which they all had a common interest, viz: namely, the firm of Bell, Lewis & Yates, by taking over Mr. Yates' interest in that firm; Mr. Bell and Mr. Lewis personally guaranteed to the mining company this indebtedness of $323,000, and what they took
55 figured out worth about $105,000 when it was all simmered down, so there was a loss of $220,000, which fell upon Mr. Bell and Mr. Lewis.

It is agreed by counsel that this action was begun by the personal service of the summons and complaint upon the defendant in Buffalo, December 22d, 1894.

The plaintiff here rested with the exception of the production of the certified copy of the decree of divorce between plaintiff and her former husband.

PLAINTIFF'S EXHIBIT F.

UNITED STATES OF AMERICA, } ss:
State of Illinois, Cook County, }

Pleas before the honorable the judges of the circuit court of Cook county, at a term thereof, begun and held at Chicago, in said county and State, on the third Monday (being the sixteenth day) of March, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States the ninety-eighth.

Present: Honorable William W. Farwell, chief justice of the circuit court of Cook county, State of Illinois; E. S. Williams, Henry Booth, John G. Rogers, Lambert Tree, judges; Charles H. Reed, State's attorney; Timothy M. Bradley, sheriff.

Attest: JACOB GROSS, *Clerk.*

56 Be it remembered that — the term aforesaid, to wit: on the 25th day of March, A. D. 1874, the following among other proceedings were had and entered of record in said court, to wit:

BENJAMIN BRUCE, JR., *vs.* MARY GRIDLEY BRUCE. } 7916. Bill.

This day came the complainant by A. L. Rockwell, Esq., his solicitor, and the defendant, by Jesse O. Norton, Esq., her solicitor, and thereupon this cause coming on to be heard before the court, Hon. W. W. Farwell, upon the complainant's bill of complaint, taken as confessed by said defendant, and testimony adduced in open court, a certificate of which testimony is this day filed in said cause.

And it appearing to the court from the testimony of the said complainant, that said complainant, Benjamin Bruce, Jr., and said defendant, Mary Gridley Bruce, were married on the 10th day of January, A. D. 1871, at Bloomington, Illinois, and that shortly after said marriage he removed to Chicago, where he, the said complainant, has ever since, and now resides.

And it further appearing to the court that about the 20th day of June, A. D., 1871, the said defendant, without cause or provocation, deserted the said complainant, and from that time henceforth, has continued such desertion, and has refused to return to said complainant, though often requested so to do.

And it further appearing to the court from the testimony of said complainant, that all the material allegations in the complainant's bill of complaint have been substantially proven, and that the complainant is a resident of the State of Illinois, and that de-

57 fendant has been guilty of desertion without any reasonable cause, for the space of two years prior to the filing of the bill of complaint in said cause.

It is therefore ordered, adjudged and decreed, and the court, by virtue of the power and authority therein vested, doth order, adjudge and decree, that the bonds of matrimony heretofore existing between the complainant and defendant be, and the same are hereby dissolved, and the same are hereby dissolved accordingly.

UNITED STATES OF AMERICA, } ss:
State of Illinois, Cook County, }

I, Frank J. Gaulter, clerk of the circuit court of Cook county, in the State aforesaid, do hereby certify, that I am the keeper of the records and files of said court, and that the above and foregoing is a true, perfect and complete copy of a certain decree made and entered of record in said court on the 25th day of March, A. D., 1874, in a certain cause lately pending in said court, on the chancery side thereof, between Benjamin Bruce, Jr., complainant, and Mary Gridley Bruce, defendant.

In witness whereof, I have hereunto set my hand and
[SEAL.] affixed the seal of said court at Chicago, in said county, this 24th day of May, A. D. 1895.

FRANK J. GAULTER, *Clerk.*

58 STATE OF ILLINOIS, } ss:
County of Cook, }

I, M. F. Tully, chief justice of the circuit court of Cook county, in the State of Illinois, hereby certify that Frank J. Gaulter, who signed the above certificate, was at the time of signing the same, and is now, clerk of the said circuit court of Cook county, duly commissioned and qualified; that said court is a court of record, having a clerk and seal; that said attestation is in due form and by the proper officer, according to the laws of the State of Illinois, and that the above signature of said clerk is genuine.

Witness my hand and seal at Chicago, in said county of Cook, this 24th day of May, A. D., 1895.

M. F. TULLY, [SEAL.]
Chief Justice of the Circuit Court of Cook County.

UNITED STATES OF AMERICA, } ss:
State of Illinois, County of Cook, }

I, Frank J. Gaulter, clerk of the circuit court of Cook county, in the State of Illinois (said court being a court of record), do hereby certify that the Honorable M. F. Tully, whose name is subscribed to the annexed and foregoing certificate, was, at the time of the signing thereof, and now is, chief justice of said circuit court, duly elected, commissioned and qualified, and that his said signature is genuine.

In witness whereof, I have signed my name and affixed
[SEAL.] the seal of said circuit court, at my office, in the city of Chicago, in said Cook county, this 24th day of May, 1895.

FRANK J. GAULTER, *Clerk.*

59 Mr. SEYMOUR: I will open this case by introducing the decree of the Pennsylvania court. The process was served under a process in the State of Pennsylvania which they serve upon a non-resident, a *pluries subpœna*. It was not served personally upon Mrs. Bell, but by publication, and a copy of it followed by the notice of hearing was sent to her.

By the REFEREE: Was she then in the State of Illinois?

Mr. WHEELER: She was not.

Mr. SEYMOUR: I produce the envelope which contained the *pluries subpœna*, which is postmarked Reynoldsville, Pa., December 1st, 8 a. m., 1894, and it is directed to Mrs. Mary G. Bell, Bloomington, Ills. The words "Bloomington, Ills." are erased, and the words "101 Hancock street, care N. Barney, Brooklyn, N. Y.," are written in a blue pencil. Do you admit, Mr. Wheeler, she received that notice?

Mr. WHEELER: That printed matter was contained in that envelope.

Mr. SEYMOUR: And that printed matter is the *pluries subpœna*

Mr. WHEELER: Whatever it is I presume it is. I don't want to make any concessions. I simply concede that that envelope was forwarded to Mrs. Bell at Brooklyn, and that she received it there. In making this concession, I am simply willing to dispense with the proof of that fact. So far as the legal effect of this decree is concerned, it would have no effect upon this case, I claim.

Mr. SEYMOUR: I only wish to get upon the record the fact that Mrs. Bell received notice outside the State of Pennsylvania of the pendency of this action.

60 Mr. WHEELER: I told Mr. Seymour I would dispense with his calling any one from Pennsylvania to show that fact.

Mr. SEYMOUR: This envelope is postmarked upon its back, "Brooklyn, N. Y., December 4th, 10 a. m., 1894, station B," and your admission is that that envelope contained that matter.

Mr. WHEELER: That envelope contained that printed slip.

Mr. SEYMOUR: I will read it.

Objected to by plaintiff as incompetent, immaterial, and irrelevant, and constitutes no defense in this action. Objection overruled. Exception by plaintiff.

Mr. SEYMOUR: It is as follows:

"Libel in divorce. Frederick A. Bell *vs.* Mary G. Bell. May term, 1893, *pluries subpœna* in divorce, Jefferson county, *ss*: The Commonwealth of Pennsylvania to Mary G. Bell, greeting: We command you that all manner of business and excuses being set aside, you be and appear in your proper person before our judges at Brookville, at our court of common pleas, there to be held on the second Monday of December next, to show cause, if any you have, why your husband, Frederick A. Bell, should not be divorced from the bonds of matrimony which he hath contracted with you, the said Mary G. Bell, agreeable to the petition and libel exhibited against you before our said court, and this you shall in no case omit at your peril. Witness the Hon. E. Heath Clarke, president of our said court, at Brookville, the 26th day of February, A. D., 1894. Allowed by the court. Attest, W. D. Clarke, prothonotary, to Mary G. Bell,

greeting: You are hereby notified to appear before the honorable judges of the court of common pleas at Brookville, Pa., on
61 the 2d Monday of December next, to answer as set forth in the above subpœna. G. D. Gourley, sheriff. October 17th, 1894."

The notice as above read, and envelope as above noted, marked Defendant's Exhibit No. 1.

Mr. SEYMOUR: I offer in evidence another envelope, postmarked Reynoldsville, December 1st, 1 p. m., 1894, directed to Mary G. Bell, of Bloomington, Ills., and the words, "Bloomington, Ills.," erased, and the words, "101 Hancock street, care N. Barney, Brooklyn, N. Y.," written upon the face of the envelope. The envelope is postmarked upon its back, "Brooklyn, N. Y., December 4th, 10 a. m., 1894, rec'd." The envelope contains the following notice: "Examiner's notice. Frederick A. Bell *vs.* Mary G. Bell, in the court of common pleas of Jefferson county, No. 225, May term, 1894. Libel in divorce. And now, September 13th, A. D. 1894, on motion presented in open court by George A. Jenks and Gordon & Reed, attorneys for libellant, John Conrad, Esq., appointed examiner in the above case, to proceed therein as directed by law. By the court. Attest, W. D. Clarke, prothonotary, to Mary G. Bell: You are hereby notified that I will attend to the duties of my appointment in the above-stated case, at my office, on Main street, in the borough of Brookville, in the county of Jefferson, and State of Pennsylvania, on the 4th day of December, 1894, at 9 o'clock a. m., at which time and place you may attend, if you see proper, and wish to do so. John Conrad, examiner. November 3d, 1894." The notice and envelope above, marked Defendant's Exhibit No. 2.

Mr. WHEELER: I desire to raise the same objection to the last paper as I did to the first.

Same ruling as before. Plaintiff excepts.

62 Mr. SEYMOUR: I offer in evidence an exemplified copy of the judgment of divorce of the court of common pleas of the county of Jefferson, State of Pennsylvania, dissolving the marriage between Frederick A. Bell, libellant, and Mary G. Bell, respondent.

Mr. WHEELER: I object to that as incompetent, immaterial and irrelevant, and on the further ground that it appears on the face of the proceeding that there never was any personal service of any process upon the defendant in the State of Pennsylvania. It appears by the face of the paper that she was not a resident of the State of Pennsylvania, and also on the ground that the exemplification is not a proper one.

Mr. SEYMOUR: You admit that the parties mentioned in this decree I offer in evidence, are the same parties now before this court?

Mr. WHEELER: Yes.

Objection overruled. Plaintiff excepts. Judgment marked Defendant's Exhibit No. 3.

Defendant's Exhibit No. 3.

Among the records and proceedings enrolled in the court of common pleas in and for the county of Jefferson, in the Commonwealth of Pennsylvania, to No. 225, May term, 1894, is contained the following:

Copy of Continuance, Docket Entry.

Frederic A. Bell
versus
Mary G. Bell.

Jenks, G. & R.

T. & W.	$2.00
Sh'ff, Gourley	1.00
Do. do.	1.00
Do. do.	1.00
Do. do.	1.50
Printer's bill	6.00
Examiner	56.00
Pro. Clarke	7.50

63 *Libel in Divorce.*

And now, April 9, 1894, the within petition presented before me in vacation and upon due consideration of the facts therein set forth a subpœna is awarded, returnable to next May term, E. Heath Clark, pres. judge. April 10, 1894, subpœna issued returnable to next term, May 14, 1894. After making due and diligent search for the within-named Mary G. Bell, I am unable to find her in my bailiwick. May 17, 1894, on motion presented in open court, alias subpœna awarded, returnable at next term, by the court; same day alias subpœna issued, September 10, 1894. After giving due and diligent search I am unable to find the within-named Mary G. Bell in my bailiwick. September 14, 1894, motion for order of publication and pluries subpœna presented in open court and motion granted by the court; same day pluries subpœna issued to be served by publication; same day on motion presented in open court, John Conrad, Esq., appointed examiner, by the court; same day commission issued. By virtue of the act of assembly in such cases made, and of the order of the court, I have caused notice to Mary G. Bell, the within-named respondent, to appear on the first day of the December term, 1894, of the court of common pleas of Jefferson county, Pa., and answer said complaint, to be published in the Brookville *Republican*, a weekly newspaper published in Brookville, Jefferson county, Pa., for four successive weeks to wit:—In the issues of the said paper of October 17, 1894, October 24, 1894, October 31, 1894, and November 7, 1894, December 24, 1894. Report of examiner filed, January 8th, 1895. Decree signed.

By the COURT.

64 In the Court of Common Pleas of Jefferson County, No. — of May Term, 1894.

FREDERIC A. BELL
versus
MARY G. BELL. } Petition for Divorce.

To the honorable the judges of the court of common pleas of Jefferson county, Pa.

The petition or libel of Frederic A. Bell, of the borough of Reynoldsville, in the county aforesaid, respectfully showeth:

That your petitioner was, on the 24th day of January, A. D. 1878, at Bloomington, in the State of Illinois. lawfully joined in marriage with Mary Gridley, his present wife, and from that time until the first day of September, A. D. 1882, lived and cohabited with her and hath, in all respect, demeaned himself as a kind and affectionate husband, and although by the laws of God, as well as by the mutual vows plighted each to the other, they were bound to that uniform constancy and regard which ought to be inseparable from the marriage state, yet, so it is, that the said Mary, in violation of her marriage vow, from the 1st day of September, A. D., 1882, hath willfully and maliciously deserted and absented herself from the habitation of your petitioner, without any just or reasonable cause, and hath persisted in and continued such desertion for the term of eleven years and upwards, and still doth persist in and continue, willfully and maliciously, to absent herself from and desert your petitioner and his habitation. And your petitioner further showeth:—That the said Mary G. Bell did, by cruel and barbarous treatment, render the condition of your petitioner intolerable and his life burdensome, for more than two years prior to the said willful and malicious desertion, and this without any just cause or provocation by him to her offered; that the said Mary did, at divers times, without just
65 cause, become violently angry towards your petitioner; that she frequently relapsed into sullen moods, continuing for days, during which times she failed and refused to treat your petitioner with even so much as ordinary civility; that she treated such friends as he chanced to invite to his home uncivilly and inhospitably to such an extent that he was compelled to desist inviting or bringing them to his said home; that she so treated your petitioner's father and mother that they refused to visit him in his home, that she repeatedly and without cause or justification charged your petitioner with infidelity to his marriage vows, and caused him to be watched by detectives and other spies; that she threatened to commit suicide, and, on three occasions, pretended to attempt to carry such threats into execution by inhaling chloroform; and that she did in these and other ways insult, humiliate, terrify and annoy your petitioner to such an extent that all harmony and happiness which he, of right, expected from the marriage state, was destroyed and made impossible, and his life was thereby rendered burdensome and his condition intolerable. Wherefore your petitioner or libellant, further showing that he is a citizen of the Commonwealth of

Pennsylvania, and hath resided therein and within the county of Jefferson for one whole year previously to filing this, his petition of libel, prays that a subpœna may issue from the said court to the said Mary G. Bell, commanding her to appear at the next court of common pleas of said county, to answer said complaint, and show cause, if any she can, why the libellant should not be divorced and separated from the bonds of matrimony as aforesaid as if the same had never been contracted. And he will ever pray, &c.

FREDERIC A. BELL.

66 STATE OF PENNSYLVANIA, } ss:
County of Jefferson, }

Before me, a justice of the peace in and for the said county of Jefferson, personally came Frederic A. Bell, the petitioner or libellant above named, who being duly sworn according to law, doth depose and say:

That the allegations contained in his foregoing petition of libel are true, to the best of his knowledge and belief; that the said complaint is not made out of levity or collusion between him and the said Mary G. Bell, his wife, and for the mere purpose of being freed and separated from each other, but in sincerity and truth for the causes mentioned in said petition or libel.

FREDERIC A. BELL.

Sworn to and subscribed before me, this 5th day of April, A. D. 1894.

[SEAL.] E. NEFF,
Justice of the Peace.

FREDERIC A. BELL } No. 225 of May Term, 1894.
v.
MARY G. BELL }

Libel in Divorce.

And now, April 9th, 1894, the within petition presented before me in vacation, and, upon due consideration of the facts therein set forth a subpœna is awarded, returnable to next May term.

E. HEATH CLARK,
Pres. Judge.

Filed April 10, 1894.
W. D. CLARKE, *Pro.*

G. A. JENKS,
GORDON AND REED,
Att'ys for Libellant.

67 *Libel in Divorce.*

JEFFERSON COUNTY, ss:

The Commonwealth of Pennsylvania to Mary G. Bell, Greeting:

[SEAL.] We command you that all matter of business and excuses being set aside, you be and appear in your proper person before our judges at Brookville, at our court of

common pleas, there to be held on the second Monday of May next, to show cause, if any you have, why your husband, Frederick A. Bell, should not be divorced from the bonds of matrimony which he hath contracted with you, the said Mary G. Bell, agreeable to the petition and libel exhibited against you before our said court, and this you shall in no case omit at your peril.

Witness the Hon. E. Heath Clark, president of our said court at Brookville, the 10th day of April, A. D. 1894.

Allowed by Hon. E. Heath Clark, pres. judge.

W. D. CLARKE,
Prothonotary.

(Endorsed.)

No. 225, May Term, 1894.

FREDERICK A. BELL
versus
MARY G. BELL. } Subpœna in Divorce.

Jenks, Gordon & Reed:

68 May 14, 1894, after making due and diligent search for the within-named Mary G. Bell, I am unable to find her in my bailiwick. So answers—

D. G. GOURLEY, *Sheriff.*

Costs, $1.00.

Sworn to and subscribed before me this 14th day of May, 1894.

W. D. CLARKE, *Pro.*

Same day sworn to in open court.

W. D. CLARKE, *Pro.*

In the Court of Common Pleas of Jefferson County, May Term, 1894.

FREDERIC A. BELL, Libellant,
vs.
MARY G. BELL, Respondent. } No. —. Libel in Divorce.

In open court, May 17th, 1894, the libellant, by his attorneys, moves the court to award an alias subpœna, the high sheriff of Jefferson county having made return and proof on May 17th, 1894, to the original subpœna, that after due and diligent search, he was unable to find the respondent in his bailiwick, etc.

G. A. JENKS,
GORDON & REED,
Attorneys for Libellant.

69 FREDERIC A. BELL, Libellant, *vs.* MARY G. BELL, Respondent. } No. 225 of May Term, 1894.

Motion for Alias Subpœna.

May 17th, 1894, the within motion presented in open court, and proof having been made to the original subpœna, that after due and diligent search, the sheriff was unable to find respondent in his bailiwick, an alias subpœna is hereby awarded, returnable at next term.

By the court:

E. HEATH CLARK, *Pres. Judge.*

G. A. JENKS,
GORDON & REED,
Att'ys for Libellant.

Libel in Divorce.

JEFFERSON COUNTY, *ss:*

The Commonwealth of Pennsylvania to Mary G. Bell, Greeting:

We command you that all matter of business and excuses being set aside, you be and appear in your proper person before [SEAL.] our judges at Brookville, at our court of common pleas, there to be held on the second Monday of September next, to show cause, if any you have, why your husband, Frederick A. Bell, should not be divorced from the bonds of matrimony which he hath contracted with you, the said Mary G. Bell, agree-
70 able to the petition and libel exhibited against you before our said court, and this you shall in no case omit at your peril.

Witness the Hon. E. Heath Clark, president of our said court at Brookville, the 17th day of May, A. D. 1894.

Allowed by the court:

W. D. CLARKE,
Prothonotary.

(Endorsed.)

FREDERICK A. BELL *versus* MARY G. BELL. } No. 225, May Term, 1894.

Alias Subpœna in Divorce.

Sept. 10th, 1894.—After giving due diligent search, I am unable to find the within-named Mary G. Bell in my bailiwick. So answers—

D. G. GOURLEY, *Sh'ff.*

Sheriff's costs, $1.00.

Sworn to and subscribed before me, this 10th day of September, 1894.

W. D. CLARKE, *Pro.*
JENKS, GORDON & REED.

71 In the Court of Common Pleas of Jefferson County.

FREDERIC A. BELL
versus
MARY G. BELL. } No. — of May Term, 1894. In Divorce.

And now, September 13, 1894, the petitioner or libellant, Frederic A. Bell, by his attorney-, George A. Jenks and Gordon and Reed, showing by the record that the sheriff of Jefferson county hath made return to the original subpœna awarded in said case, "that after due and diligent search he is unable to find the respondent, Mary G. Bell, within his bailiwick," and that said sheriff hath made the same return to the alias subpœna awarded in said case, respectfully moves the court to award a pluries subpœna or order for publication, to be served on said Mary G. Bell, by publication, as required by law and the rules of this court.

G. A. JENKS,
GORDON & REED,
Attorneys for the Libellant.

September 13, 1894.—The above motion being presented in open court and it appearing that the sheriff of Jefferson county was unable to find the respondent, Mary G. Bell, in his bailiwick, and that he hath made such return to the original subpœna and to the alias subpœna, it is now ordered and decreed that a notice in form of a pluries subpœna be issued to the said Mary G. Bell, to be published as required by law and the rules of this court.

By the court:

E. HEATH CLARK,
President Judge.

72 (Endorsed.)

FREDERIC A. BELL
vs.
MARY G. BELL. } No. 225, May Term, 1894.

Motion for Order of Publication and Order of Court Thereon.

September 13, 1894.—The within motion presented and filed in open court and motion granted. See order herewith.

By the court:

E. HEATH CLARK, *Pres. Judge.*
JENKS, G. & R., *For Libellant.*

Libel in Divorce.

JEFFERSON COUNTY, *ss:*

The Commonwealth of Pennsylvania to Mary G. Bell, Greeting:

We command you that all matter of business and excuses being set aside, you be and appear in your proper person before our judges, at Brookville, at our court of common pleas, there to be held on the 2d Monday of December next, to show cause, if any you

have, why your husband, Frederick A. Bell, should not be divorced from the bonds of matrimony which he hath contracted with you, the said Mary G. Bell, agreeable to the petition and libel exhibited against you before our said court, and this you shall in no case omit at your peril.

73 Witness, the Hon. E. Heath Clark, president of our said court, at Brookville, the 14th day of September, A. D. 1894.

Allowed by the court.

W. D. CLARK,
Prothonotary.

(Endorsed.)

FREDERICK A. BELL
versus
MARY G. BELL. } No. 225, May Term, 1894.

Pluries subpœna in divorce, to be served by publication.
Sheriff's costs, $2.50; printer's bill, $6.00.

JENKS, GORDON & REED.

JEFFERSON COUNTY, *ss:*

By virtue of the act of assembly in such case made and of the order of court, I have caused notice to Mary G. Bell, the within-named respondent, to appear on the first day of the December term, 1894, of the court of common pleas of Jefferson county, Pa., and answer said complaint, to be published in the Brookville *Republican*, a weekly newspaper, published in Brookville, Jefferson county, Pa., for four successive weeks, to wit, in the issues of said paper of October 17, 1894; October 24, 1894; October 31, 1894, and November 7, 1894. So answers—

D. G. GOURLEY,
High Sheriff of Jefferson County, Pa.

Sworn to and subscribed before me December 10, 1894.

W. D. CLARKE,
Prothonotary.

74 JEFFERSON COUNTY,
The Commonwealth of Pennsylvania, } *ss:*

In the Court of Common Pleas of Jefferson County, No. 225 of May Term, 1894.

Personally appeared before the undersigned, prothonotary, etc., within and for said county and State, H. J. Weaver, one of the publishers of the *Republican*, a weekly newspaper published at Brookville, county of Jefferson, State of Pennsylvania, who, being duly sworn, states on oath that the notice, of which the annexed is a copy, was published in said newspaper for four consecutive weeks, in the issues bearing date of October 17th, October 24th, October 31st, November 7, 1894.

H. J. WEAVER.

Sworn to and subscribed before me this fifteenth day of November, 1894.

W. D. CLARKE,
Prothonotary.

Libel in Divorce.

FREDERICK A. BELL
vs.
MARY G. BELL. } No. 225, May Term, 1893. Pluries Subpœna in Divorce.

JEFFERSON COUNTY,
The Commonwealth of Pennsylvania, } *ss:*

To Mary G. Bell, Greeting:

We command you, that all matter of business and excuses being set aside, you be and appear in your proper person before our judges at Brookville, at our court of common pleas, there to
75 be held on the second Monday of December next, to show cause, if any you have, why your husband, Frederick A. Bell, should not be divorced from the bonds of matrimony which he hath contracted with you, the said Mary G. Bell, agreeable to the petition and libel exhibited against you before our said court, and this you shall in no case omit at your peril.

Witness, the Hon. E. Heath Clark, president of our said court, at Brookville, the 26th day of February, A. D. 1894.

Allowed by the court.
Attest:

W. D. CLARKE,
Prothonotary.

To Mary G. Bell, Greeting:

You are hereby notified to appear before the honorable judges of the court of common pleas, at Brookville, Pa., on the second Monday of December next, to answer as set forth in the above subpœna.

D. G. GOURLEY, *Sheriff.*

October 17, 1894.

In the Court of Common Pleas of Jefferson County, Pa.

FREDERIC A. BELL
vs.
MARY G. BELL. } No. — of May Term, 1894. In Divorce.

Now, September 13th, 1894, the libellant, Frederic A. Bell, by his attorneys, George A. Jenks and Gordon and Reed, moves the court to appoint an examiner in the above case, to proceed therein as directed by law.

G. A. JENKS,
GORDON AND REED,
Attorneys for the Libellant.

76 FREDERIC A. BELL
vs.
MARY G. BELL. } No. 225 of May Term, 1894.

Motion for the Appointment of an Examiner in Divorce.

Now, September 13th, 1894, the within motion presented in ope court, and John Conrad, Esq., is hereby appointed examiner, to pr ceed in said case as required by law.

By the court:

E. HEATH CLARK,
President Judge.

JENKS, GORDON AND REED,
Attorneys for the Libellant.

JEFFERSON COUNTY, *ss:*

In the Court of Common Pleas of said County.

[SEAL.]

FREDERIC A. BELL
vs.
MARY G. BELL. } No. 225, May Term, 1894. Libel in Divor

And now, September 13th, 1894, on motion presented in open co by Geo. A. Jenks, and Gordon and Reed, Esqrs., attorneys for t libellant, John Conrad, Esq., — appointed examiner in the abo case, to proceed therein as directed by law.

BY THE COURT.

Attest: W. D. CLARKE,
Prothonotary.

77 FREDERIC A. BELL
vs.
MARY G. BELL. } No. 225, May Term, 1894.

Report of Examiner.

John Conrad, examiner	$50.0
" " " paid for notice in 2 papers, at $3.00 each	6.0

Commission to John Conrad, Esq., examiner.

December 24th, 1894.—Presented and filed in open court, a ordered on current argument list.

BY THE COURT.
JENKS, GORDON AND REED.

In the Court of Common Pleas of Jefferson County, May Term, 1894.

FREDERIC A. BELL
vs.
MARY G. BELL. } No. 225. Libel in Divorce.

And now, September 13th, 1894, on motion presented in open court by George A. Jenks and Gordon and Reed, Esqrs., attorneys for the libellant, John Conrad, Esq., appointed examiner in the above-stated case, to proceed therein as directed by law.

BY THE COURT.

Attest: W. D. CLARKE,
Prothonotary.

78 To Mary G. Bell:

You are hereby notified that I will attend to the duties of my appointment in the above-stated case, at my office, on Main street, in the borough of Brookville, in the county of Jefferson and State of Pennsylvania, on the fourth day of December, A. D. 1894, at 9.00 o'clock a. m., at which time and place you may attend if you see proper and wish to do so.

JOHN CONRAD, *Examiner.*

November 3d, 1894.

To the honorable the judges of the court of common pleas of Jefferson county:

The undersigned examiner, appointed by the court, as per commission hereto attached, respectfully reports: That he was affirmed according to law; that he published due notice of the time and place of the hearing in this case, in the Jefferson *Democrat* and the Brookville *Republican*, published in Brookville, Jefferson county, in the State of Pennsylvania, and also posted a copy of said notice in a conspicuous place in the prothonotary's office for more than twenty days, also mailed a copy of said notice more than twenty days before the hearing to Mary G. Bell, at Bloomington, McLean county, Illinois; a copy of said notice is hereto attached. In pursuance of said notice, the examiner attended at his office, in the borough of Brookville, in the county aforesaid, on the 4th day of December, A. D. 1894, at 9.00 o'clock a. m., the time and place fixed for the hearing. C. Z. Gordon, Esq., appeared for the libellant, and on his application, on the ground of sickness of the libellant, the case was continued December 13, 1894, at 9.00 o'clock a. m. At which time

C. Z. Gordon, Esq., appeared for the libellant, and on account
79 of the continued sickness of the libellant, the hearing was adjourned to December 19, 1894, at 9.00 a. m. At which time the libellant appeared with his attorneys, C. Z. Gordon, Esq., and Hon. George A. Jenks. The respondent did not appear; the testimony offered on the part of the libellant and taken by the examiner at said hearing is hereto attached. From the testimony the examiner finds the following facts:

Frederic A. Bell, the libellant, and Mary Gridley, now Mary G.

Bell, the respondent or defendant, were, on the 24th day of January, A. D. 1878, at Bloomington, in the State of Illinois, married. Immediately after their marriage they lived together as husband and wife, in Rochester, New York. Subsequently they lived in a fine residence on Delaware avenue, in Buffalo, New York. She was of an erratic, morose and jealous disposition. They have had no children. Her moods led to troubles in the family, induced by herself. The libellant was of an even, kind and considerate disposition; she made home unpleasant, made it embarrassing to strangers visiting, and very embarrassing and unpleasant to the parents of the libellant to visit at their home. The libellant endeavored to make home happy and comfortable for her; he had a coachman hired to take her out driving from four to six times a week, but she would take sullen moods, when she would not speak to him, and she acted very ugly and cruelly to him sometimes. The respondent, Mary G. Bell, left her husband's home in Buffalo the first or second week in August, 1882, and went to Bloomington, Illinois, and she returned about the first of September, 1882, accompanied by her mother, Mrs. Gridley. She stayed about a week, and she then left home, the house and habitation of her husband, accompanied by her mother, and told Mrs. Maggie Cashian, an
80 employé in the house, that she was going away from there for good, and wanted Mrs. Maggie Cashian to leave at the same time, giving as the reason that it would look better if they both left at the same time. She said she was going to stay with her mother, in Bloomington, Illinois, and she was very much excited. Frederic A. Bell, the libellant, was away on business when she left. She never returned to Frederic A. Bell's society or home after she left at that time; she lived in Bloomington, Illinois, since she deserted the libellant: she left him and willfully and maliciously deserted him without reasonable cause. Frederic A. Bell left Buffalo, New York, in March, 1893, and in March, 1893, he became resident of the borough of Reynoldsville, in the county of Jefferson and State of Pennsylvania, and has been a resident there since, and also has since that time been a citizen of the State of Pennsylvania.

Legal Conclusion.

The examiner's opinion — that the desertion of Mary G. Bell, the respondent, from Frederic A. Bell, the libellant, is, and has been of such a nature and character as to entitle the libellant to be divorced and forever separated from the nuptial ties or bonds of matrimony with Mary G. Bell, the respondent. The desertion having been without just cause and continued for over twelve years, there appears no good reason why a divorce should not be decreed. The examiner, therefore, respectfully recommends the decree of divorce hereto attached, and he hereby certifies that he is not concerned as counsel for, nor related to, either of the parties in this proceedings, nor interested in the event thereof. All of which is respectfully submitted.

December 24, A. D. 1894.

JOHN CONRAD, *Examiner.*

81 In the Court of Common Pleas of Jefferson County.

FREDERIC A. BELL
versus
MARY G. BELL. } Of May Term, 18—. No. 225. Divorce.

And now, January 8, 1895, the court having heard this case, and having fully considered and proceeded to determine the same as to law and justice appertain,

Do sentence and decree, that the said Frederic A. Bell be divorced and separated from the nuptial ties and bonds of matrimony heretofore contracted between him, the said Frederic A. Bell, the libellant, and the said Mary G. Bell, respondent, and that thereupon all and every the duties, rights and claims accruing to either the said Frederic A. Bell, or the said Mary G. Bell, at any time heretofore in pursuance of said marriage, shall cease and determine.

And further, the court do award to the said Frederic A. Bell, against the said Mary G. Bell, his costs in this behalf expended.

By the court:

E. HEATH CLARK,
President Judge.

[L. S.]

Attest: W. D. CLARKE,
Prothonotary.

82 COMMONWEALTH OF PENNSYLVANIA, } *ss:*
County of Jefferson,

I, W. D. Clarke, prothonotary of the court of common pleas in and for said county, do hereby certify that the foregoing is a full, true and correct copy of the whole record of the case herein [L. S.] stated, wherein Frederic A. Bell is libellant, and Mary G. Bell, respondent, as the same remains of record before the said court at No. 225 of May term, A. D. 1894, except testimony before examiner.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court this eighth day of January, A. D. 1895.

W. D. CLARKE,
Prothonotary.

I, E. Heath Clark, president judge of the eighteenth judicial district, composed of the counties of Clarion and Jefferson, do certify that W. D. Clarke, by whom the annexed record, certificate and attestation were made and given, and who, in his own proper handwriting, thereunto subscribed his name and affixed the seal of the court of common pleas of said county, was at the time of so doing, and now is, prothonotary in and for said county of Jefferson, in the Commonwealth of Pennsylvania, duly commissioned and qualified, to all of whose acts as such full faith and credit are and ought to be given as well in courts of judicature as elsewhere, and that the said record, certificate and attestation are in due form of law, and made by the proper officer.

E. HEATH CLARK,
President Judge.

83 COMMONWEALTH OF PENNSYLVANIA, } ss:
County of Jefferson, }

I, W. D. Clarke, prothonotary of the court of common pleas and for the said county, do certify that the Honorable E. Hea Clark, by whom the foregoing attestation was made, and who h thereunto subscribed his name was, at the time of making there and still is, president judge of the court of common pleas, orphan court and court of quarter sessions of the peace, in and for sa county, duly commissioned and qualified, to all whose acts as suc full faith and credit are and ought to be given, as well in courts judicature *or* elsewhere.

In testimony whereof, I have hereunto set my hand and affixe the seal of said court, this eighth day of January, A. [L. s.] 1895.

W. D. CLARKE,
Prothonotary.

Mr. SEYMOUR: I offer to introduce section 438, article 2d, of th Code of Civil Procedure of the State of New York, with special re erence to paragraphs 1 and 4 of said section.

Mr. WHEELER: I think it is incompetent. The court will tak judicial notice of it.

By the REFEREE: I sustain the objection on the ground that th court is bound to take official notice of it; this court, or any othe court you may go before.

Exception by defendant.

Mr. SEYMOUR: I offer in evidence section 1, chapter 40, of th Revised Statutes of the State of Illinois.

By the REFEREE: That purports to be published by authority

Mr. SEYMOUR: Yes, it is published by authority.

84 Plaintiff objects to it as incompetent, irrelevant and im material. Admitted by the court, and exception by th plaintiff.

Mr. SEYMOUR: I will read the section: "Chapter 40, section 1— Causes. Be it enacted by the people of the State of Illinois, repre sented in General Assembly, That in every case in which a marriag has been or hereafter may be contracted and solemnized betwee any two persons, and it shall be adjudged in the manner herein after provided, that either party at the time of such marriage wa and continues to be naturally impotent; or that he or she had a wife or husband living at the time of such marriage; or that eithe party had committed adultery subsequent to the marriage, or ha willfully deserted or absented himself or herself from the husband or wife without any reasonable cause, for the space of two years, o has been guilty of habitual drunkenness for the space of two years or has attempted the life of the other by poisoning or other means showing malice; or has been guilty of extreme and repeated cruelty; or has been convicted of felony, or other infamous crime, it shall be lawful for the injured party to obtain a divorce and dis solution of such marriage contract."

EDWARD M. BELL, sworn, testified for defendant:

I am thirty-five years old; I am defendant's second cousin: in 1882 I lived in Buffalo, and had since June, 1877. I was admitted to the bar in 1881. I practiced law in Buffalo until July, 1886, in partnership with Ernest K. Weaver, and afterwards with Judge Brundage and Mr. Weaver. Mr. Weaver and I were together for about two years, and were afterwards joined by Judge Brundage for a little more than two years, when I severed my connection
85 with the firm, in July, 1886, I think. During the years 1881 and '82 I have frequently visited the parties to this action at their home on Delaware avenue, Buffalo. I used to go there quite frequently; in the habit of dropping in there if I were uptown. I was there quite often in the winter of 1881 and 1882. Mr. Bell would not always be at home when I called. I cannot remember exactly how many times I had been calling there in the spring or early summer of 1882; I suppose I was there at least once a week. I knew Mrs. Bell very well at that time. The only thing I can say is I knew her very well. I remember the night in question when I spent an evening there. I cannot state what time it was, in the spring or summer. I cannot state definitely the date. It was three or four months before Mrs. Bell went away from Buffalo. I should think the latter part of May or the first part of June. I could not exactly say what time I went to the house that evening. It was the fore part of the evening. Mr. Bell was not there. He was out of the city, I believe. Mrs. Bell and I spent the greater part of the evening on the veranda. It was in the spring; it was warm enough to sit there. It began to rain along about the latter part of the evening as I was about to go to get ready to go down street to my rooms. Mrs. Bell asked me if I would not stay there during the night, and after breakfast go down in the morning, and thus avoid getting wet. I said I should be very glad to do that. Before that Mrs. Bell had been talking to me about her life with defendant. She appeared to be very unhappy, almost hysterical. She said that she thought Mr. Bell did not love her, and she seemed to be quite unhappy about it. She shed tears. The chief subject of her conversation throughout the entire evening was about Mr. Bell and her unhappiness. Before this time I had been there when
86 Mr. Bell was away, passing the evening with her a number of times. I could not say whether once a week or once in two weeks, but I used to go there quite frequently. I used to feel that I could run in there at any time. Usually every time I called there when Mr. Bell was not there, she made a confidant of me in relation to her life with Mr. Bell. Her manner upon those occasions was always that of a lady, but she was always speaking of Mr. Bell, of his being absent from the house so much, and inclined to touch upon the subject of whether he loved her or not. She was afraid that he did not, and she was very unhappy in consequence of it; that was the general tenor of her remarks.

Q. Coming to the point, then, about what time was it when she asked you to stay all night?

A. It was the latter part of the evening, when it began to rain;

I should say possibly about nine o'clock or a little after. I think we stayed downstairs about half an hour after that. I heard her say that she would speak to one of the servants and have a room fixed for me. Then she went into the house. I did not see the servant or hear what orders she gave to her. Then afterwards we got ready to retire. The front part of the house was dark. I don't know whether the light was lit and turned low in the hall or not. I could not say as to that. The room that was assigned to me was on the left side of the hall, looking towards Delaware avenue, and the rooms on the other side of the hall were occupied by Mrs. Bell. The doors were left open into the hall and a conversation carried on from one room to another; not much of a one, but an occasional remark, as I remember it. We talked back and forth across the hall. When I was ready to retire I went to the door of the room and called out "Good night." Mrs. Bell came to her door and said "Good night," and we kissed
87 each other in the hall. At this point I was undressed and ready to retire. I stepped out into the hall to the door and she came to the door. To all appearances she was ready to retire the same as I was. She had nothing on but a night gown. We kissed each other good-night. After that—it is a rather difficult thing to describe, but I suppose I drew Mrs. Bell into my room. She was there for a short time and retired immediately to her room. She went into my room with me. We walked in. There was no exhibition of any force or anything of that kind. She went in with me. I did not close the door. We were there for possibly ten or fifteen minutes. She did not go into the bed with me but onto the bed. The usual thing occurred, the usual thing that would result when we were in bed together. At that time, on that occasion, I had sexual intercourse with Mrs. Bell, the plaintiff in this action. Then Mrs. Bell immediately left and retired to her room and I stayed in my room. The next morning we ate breakfast and very little was said. Then I went down to my office. I ceased the practice of law as I said, about July, 1886, and went into the theatrical business. I became first a member of Eugene McDowall's company for one season, and then I was with Rhea one season, and then a member of Colonel Simm's company, and then after that a member of Mr. A. M. Palmer's company. I remember meeting the defendant in New York during the horse-show week in 1891, and of having a talk with the defendant that week about this incident which I have just related. I remember meeting Mr. Bell in the café of the Hoffman house, and we sat down at a table, and talked there for some little time, and drank there. I remember distinctly the occurrence. I remember opening the subject of the conversation. I asked him where Mrs. Bell was, and he said
88 he didn't exactly know, but supposed she was in Illinois. We got to talking about his troubles, and during the conversation I intimated to him that perhaps things—perhaps he did not know everything in regard to the matter that he should know, if he did perhaps he would not worry or feel badly, or anything of that kind. And afterwards, I cannot remember distinctly, of course,

just exactly what I said to him, but afterwards I was in hopes he had forgotten the conversation. I told him enough to arouse his suspicions. I told him in substance that I had known Mrs. Bell better than I should have done or ought to have done. That was the first time I had ever informed him of that fact.

Cross examination by Mr. WHEELER:

I have a sister living in Wisconsin. My father and mother are dead. I practiced law with Mr. Weaver two or three years before Judge Brundage joined us. I left in 1886 and did not practice after that. I did not make a success at law, not a financial success. In 1889 I joined A. M. Palmer's company. A year ago last spring I returned to New York from a theatrical trip, and from that time I did no work until I went out with "Shenandoah." I applied to Mr. Frohman for a place, and was an applicant at the theatrical exchange, but was unable to obtain any engagement I cared to take. I did not do a stroke of work in the meantime. I did not make an engagement last year, but I engaged with Charles Frohman, and the manager of that company became security for my outfit. He did it as an accommodation. He engaged me to take the place of Mr. Ed. Ratcliffe, who was leaving "Shenandoah." I had been intemperate. I have always drank more or *elss*. It was Thanksgiving I received word Mr. Frohman wanted to see me, and I was called on to take
89 place of a man that had become sick in the play called "Shenandoah." I had up to that time been under treatment for my habits. I had been to the Keeley Institute at White Plains. I went there in July and stayed until August. I have been there twice. I stayed four weeks, before. I went back the following year. I have drank since leaving. I have been intoxicated since then. I can't remember how many times. "Shenandoah" was a traveling company. I started with them two weeks before Christmas. They just went to Washington, played a week there, then back to New York, and laid off the week before Christmas, and then went to Chicago. I left them at end of first week. I played there one week. I did not notify the proprietor I was going. I told him I was afraid my voice would play out. I could not speak. They came to me and told me I would be relieved. I remained in Chicago a few days, just about a week. I then came to Buffalo. I had on a riding suit when I came to Buffalo. I had on riding boots, the very ones I wore on the stage in one of my scenes. I had riding breeches on. I went to the Iroquois in Buffalo. I stayed one night. I saw Mr. Bell. I went to his office. I think I arrived in Buffalo the 12th. I saw Mr. Bell only a short time on Saturday. I went to the hotel and got a little bit full. I think I was a trifle full when I went to see Mr. Bell. Don't remember whether I met Mr. Seymour that day. I might have met him. I spent the next day with Mr. F. A. Bell at his office. I left that night for New York. I saw Mr. Bell in New York shortly after I went back. I have seen Mr. Bell twice at my house. I remember Mr. Draper coming to see me. So far as I know he came at your

request. He showed the answer in this case to me, and asked me to state what my position was in this matter. I told him I could not say anything. I told him I would look into the matter
90 and let him hear from me. I did not let him hear from me. He wanted me to sign an affidavit that the allegation was not true. I told him I could not sign anything at that time. I would have to see Mr. Bell and find out about this thing, and let him know. I meant Mr. Frederick A. Bell. I knew Mrs. Bell claimed the allegations to be untrue. I did not think you had any business to come to me in a matter of that kind. Mr. Draper had a very delicate task to perform, and he was performing it as well as he could. I didn't think it was any of his business. I thought when Mr. Draper came to me and wanted me to sign an affidavit that he was overstepping the bounds, and I told him I couldn't tell him anything at all; couldn't say anything.

Q. In other words, here was a woman charged with an offense with you, and you stood back and refused even to tell what position you were going to take in the matter?

A. Yes; I said I could not say anything to him at all. When I told him I would look into the matter, I did not intend to look into it. I just simply put him off, and did not look into it. When I was in Buffalo I was a guest in Mr. Bell's family frequently. I was received with confidence and treated with respect by Mr. Bell as well as Mrs. Bell. Yet, knowing that fact, I took advantage of my position to do what I say I did. It was regretted afterward. After that I made only a couple of very short calls, and after Mrs. Bell left I met Mr. Bell occasionally. I don't recall going to dine at Mr. Bell's after Mrs. Bell left. Mrs. Bell left either in August or September, 1882. I never was guilty of this offense more than once. I never told Mr. Bell I was. I do not know how, in his answer, he mentions "adulteries" or "alleged adulteries." I am able to fix the date of this transaction, because it occurred but a little while before Mrs. Bell went away, two or three months, possibly June or the latter part of May. I think it was some time along in
91 there somewhere. It might have been longer than three months, but I think it was some time along the very last of May or the first of June. I did not tell Mr. Bell it was in June. I told him just what I have told you. Mr. Bell asked when it occurred, and I said two or three months before she went away. The latter part of spring. It was two or three months, might have been a little over three months. I don't remember. It could not have been a month over. I gave Mr. Bell the information. He wanted to know when it was. Of course, I suppose the allegation Mr. Bell has made, when it was made, was made upon the information I furnished Mr. Bell in 1891.

Q. Was Mr. Bell very particular to find out the date so he could incorporate it in his answer?

A. No, sir. Mr. Bell never spoke to me about it, except I told him that it was three or four, or two or three months before Mrs. Bell went away. It was probably, as near as I could put it, the

latter part of May, or the fore part of June, along in there somewhere. I cannot tell you which was more probable, May or June.

Q. You say it was warm weather?

A. It was so you could sit out awhile on the veranda. We were out and the veranda chairs were out. It was pleasant until it began to rain. It was not warm, uncomfortably warm. I can't say what I did the next day. I can't say what day of the week it was, but I think it was on Sunday evening. I would not be positive. I cannot fix the date with reference to any other occurrence in my life. Mr. Bell was out of town. I did not know he was out until I arrived at the house. Can't tell how long after that I called again. I took breakfast there the next morning.

Redirect examination by Mr. SEYMOUR:

While I practiced law in Buffalo I played in private the-
92 atricals given by the Buffalo Amateur Dramatic Club. The members of that company came from the very highest circles of Buffalo society. I believe I was considered a success in amateur theatricals, and that was mainly instrumental for my going upon the stage. The past two years the theatrical business has been in a greatly depressed state and hundreds of good actors have walked the streets of New York, greater actors than a great many that are employed. In this interview with Mr. Draper I declined to make an affidavit that I had not had intercourse with Mrs. Bell, and so stated to him. There is a door at the end of the hall, the hall that is in the front part of Mr. Bell's house, where he lived the night of this occurrence, which shuts off the servants' part from the main part. When I came from Chicago here I went to see Mr. Bell at his office and he was engaged the first day that I went there. He told me he would see me in the morning. I saw him in the morning and I talked this case over with him, and stated to him these facts. I had an interview with Mr. Seymour in the Hotel Waldorf in New York a month or so ago. He asked me to state what I knew of this matter and I stated it to him. When I came here from Chicago this time in question, I came because Mr. Bell asked me to come and see him about this matter.

MAGGIE CASHION, sworn for defendant, testified:

I am about thirty-eight years old. I live at 734 South Division street, Buffalo. I was married in 1890. I lived in Buffalo in 1881; in that year, in August, I was Mr. and Mrs. Bell's cook. I applied at the house for service and was engaged by Mrs. Bell, and stayed there until 1883. I was there all the time excepting six weeks from the last week in June to the last week in August in 1882, when I
93 was in Montreal visiting my parents; then I returned to Mrs. Bell and stayed there until November, 1883, I think, when Mr. Bell broke up housekeeping. I saw Mr. Edward M. Bell several times. I couldn't exactly say how many times. I have seen him a few times in the kitchen popping corn; him and Mrs. Bell used to come out in the kitchen popping corn; at such times I

could not say where the defendant, Mr. F. A. Bell, was; I don't know whether he was in the house or out of the house; he didn't come out into the kitchen with them.

Q. Do you recall a time before you went to Montreal in the year 1882, when Mr. Bell spent an evening there?

A. I remember he was there evenings; I couldn't give you no dates.

Q. But do you remember one evening before you went to Montreal when Mr. Bell was there in the house and Mrs. Bell called you and gave you an order?

A. I don't know how long it was before I went away.

Q. Do you remember such an evening?

A. I remember one evening she called me and told me to make up the front bed-room; I don't remember whether it was winter or summer; I don't remember whether it was cold or hot weather.

Q. You remember an evening when she called you and said what?

A. Told me to do up the front bed-room.

Q. What else did she say?

A. She said Mr. Bell was going to stay over night.

Q. Mr. Bell had been there that evening?

A. He was there that evening; I don't remember whether he stayed all night or not.

Q. Did you go and make up the bed?

A. Yes, I put some blankets on the bed; I don't know whether it was winter or summer; I don't remember that part.

Q. Did you get an order that night to cook breakfast for more than one?

A. I don't remember.

94 Q. Did you cook for more than one or two the next morning?

A. I don't remember; I cooked breakfast as usual; I don't remember whether it was one or two; I don't remember whether Mr. Frederick Bell was at home that night; I don't remember seeing him about that evening; I don't remember seeing him that night; I have no reason to think he was not; I don't remember it; I don't remember whether I saw him about the house that evening or not; to the best of my knowledge we had a butler there at that time; that year Mrs. Bell first left Buffalo about the last of August, to the best of my knowledge; I think she was gone two weeks; I couldn't say for sure; she told me she was going to Bloomington, Illinois, to see her mother; she was gone about two weeks, then she returned home; her mother came with her; she stayed three or four days; it was about the first week in September when she returned from Bloomington; then she stayed a few days, when she left with her mother. They never returned to the house after that. Mrs. Bell bade me good-bye when she left the second time. I don't know what she said; she said good-bye to me; she didn't say anything about when she would come back; she intended to stay home, I think; I ain't sure; I wouldn't exactly say what Mrs. Bell did say to me then; I didn't pay much attention.

Q. Did she say anything about leaving Mr. Bell then?
A. She did.
Q. What was that?
A. That she was going for good, she told me—I had a letter from a lady that I lived with in Montreal, and first Mrs. Bell told me I should not leave her, and then after she spoke to Dr. Von Bokkelen, then she told me I had better go to that lady. I told her I had just returned from Montreal and I didn't want to go to any more expense, and she said she would pay my way back. I remember her saying that in her own bed-room; she said it would look better on her part if I were to leave Mr. Bell at that time. She did not say it would look better upon my part. I said I would stay with Mr. Bell, and I stayed with him a year and three months after that. All that time Mr. Bell kept open house. I never saw Mrs. Bell there again. I saw her in Buffalo, once on Franklin street, two years after that; she didn't say anything only she was glad to see me and glad to know I was getting along. I don't remember how long it was before I left for Montreal when Mrs. Bell called me to make up the bed that night. I think it was cold weather. It might have been a month before I left for Montreal and it might have been three. I ain't sure. I remember Mrs. Bell several times asking me to do up rooms. She never asked me to make up a bed stating that Mr. Bell was going to stay all night, but on only one occasion, but whether it was cold or raining, I don't know what reason there was. After Mrs. Bell left for good I called Mr. Frederick Bell's attention to the fact that Mrs. Bell had given me this order one night and that Mr. Bell had stayed there all night.

95

Q. And it made an impression on your mind?
A. Well, yes; not at the time, it didn't.
Q. But afterwards?
A. Afterwards—Joseph told me.
Q. Never mind, but afterwards did it make an impression on your mind?
A. I thought over it; yes. When Mrs. Bell used to come into the kitchen, popping corn, she was always very pleasant, pleasant at the time she would come in. She seemed happy and pleasant. Sometimes she seemed happier and pleasanter than she did at other times, and sometimes she didn't. I don't know as I ever noticed any difference in Mrs. Bell's manner when she was with Mr. Edward Bell than when she was with Mr. F. A. Bell, only she was happy and pleasant when she was in the kitchen popping corn. I have had an interview with Mrs. Bell, the plaintiff in this action, this week. She called at my house, at 734 South Division street. She was there about ten or fifteen minutes, so far as I can remember. I didn't look at the time; it was on a Thursday evening, half past five, I think. Before Mrs. Bell went away, in August, she had been home all that summer, as far as I remember. She was at home all the time. I was away six weeks during the summer months. I don't know about her going away. I was only home

96

a few days when she went away. Before I went away she had been at home all the spring and summer, so far as I remember.

Q. Do you remember times while Mrs. Bell and Mr. Bell were living together when she did not speak to him for days?

Objected to by plaintiff as incompetent, immaterial and irrelevant.

By the REFEREE: I think it is proper to show the relations of these parties to each other.

Objection overruled; exception to plaintiff.

A. As far as I could see, I thought they were not speaking at times, but I don't know the reason. I remember times when Mrs. Bell didn't speak to Mr. Bell for days.

Q. At such times, what was the expression on Mrs. Bell's face?

A. Sometimes she looked pleasant, and sometimes she looked sad and troubled-like.

Q. Haven't you used other expressions in regard to that?

A. She was excited. Sometimes she looked pleasant and sometimes troubled and excited-looking.

Q. I am speaking of those times when they were not speaking to each other. She didn't look pleasant then, did she?

A. No.

97 Q. And in what was she excited?

A. She would come into the kitchen and want to know where Mr. Bell was, when he passed downstairs; sometimes follow him into the cellar when he would go down cellar for his cigars, and sometimes into the barn, and then she would go into the front part of the house. She looked disagreeable and excited looking. I couldn't say how long this state of affairs would last, because I was not in the front part of the house. I would see her when she came to see me. To the best of my recollection, the longest time I have known any of them to last was a week or three or four days. At these times she always seemed to have a suspicion of Mr. Bell, jealous-like, as far as I could understand, when she would enquire for him. Mrs. Bell at one time started to tell me about her troubles, and I told her I didn't want to hear her troubles. I was there to do her work. She never told me anything about them. At the time I was there Mr. Bell had a butler; the first one he had was William. He was colored. He is dead. I heard Mrs. Bell had had a conversation with William about Mr. Bell. She told him to go and follow Mr. Bell and see where he went to. He went to the club and he came back and told her he went to the club. This was in the evening. Mr. Bell had been at the house, and after he left the house she had this talk with the butler. I have never seen Mr. Bell in company, but as to his manner usually towards Mrs. Bell, I always seen Mr. Bell just the same as he always was, always quite pleasant. I never was in their company in the house because I never waited on them at the table, but when I would see them he was always as usual. I remember an incident when Mr. Bell came to the back stairs and called me. I don't remember whether it was

in 1882 or '81. He told me to come upstairs, and I followed
98 him into her room. She was in her library, lying on the floor, upon her side, full length. It was in the evening. The bed was undisturbed. I observed a bottle and a handkerchief on the bed. I noticed a peculiar odor in the room. As she lay on the floor she seemed to be sleeping. Mr. Bell and I picked her up and laid her on the bed, and we unloosened her waist and put some stuff that Mr. Bell got out of his bath-room, I guess it was ammonia, to her nostrils, and she came to. We rubbed her hands and her limbs.

Q. When she was lifted up and put upon the bed, what was the condition of her limbs?

A. Well, I was excited; I don't know really.

Q. I want to ask you whether she was rigid?

A. As far as I remember she was rigid; yes, sir.

Q. What did Mr. Bell do as she was put on the bed?

A. He did all he could to bring her to.

Q. For how long?

A. Ten minutes, as far as I remember.

Q. What did he do then?

A. He stayed with her.

Q. You said he went and got a bottle?

A. Yes, he went into the bath-room and got a bottle, and took the cork out and put it on a handkerchief, and put it to her nostrils. This was right away after he put her on the bed, and he came right back and put it to her nostrils.

Q. How soon did she revive, then, to the best of your recollection; didn't she come to at once?

A. She made a motion.

Q. At once?

A. Yes, sir. After Mr. Bell uncorked this bottle I know there was a smell of ammonia, or hartshorn.

Q. What did Mrs. Bell do then?

A. She was lying on the bed still when I left the room; I left Mr. Bell and her together.

Q. Did you see her leave the bed and sit in a chair before you left the room?

99 A. Let me see, I wouldn't be sure of that; I don't remember. Before Mr. Bell came to the back stairs to call me I had seen him coming out of the barn, and go through up into the house. Just as soon as he went upstairs, after he had come through from the stable, he called me.

Q. When you saw Mrs. Bell lying on the floor, what was the odor like in the room?

A. I couldn't describe it; I thought it was chloroform; I never knew the name; I never smelled it before; I was frightened; I thought Mrs. Bell was dead; yes, sir, I thought it was chloroform; it is a peculiar odor.

Q. Was there any impression made upon your mind as to whether or not Mrs. Bell was shamming?

A. Well, I thought Mrs. Bell got over it very quick; I thought

she was worse than she was, but she got over it so quick; that is the only thing that I thought.

Q. Did you ever hear Mrs. Bell say anything to Mr. Bell that was unpleasant, or that would tend to hurt his feelings?

Objected to by plaintiff as leading.

By the REFEREE: Have you ever heard anything between the parties, Mrs. Bell use an expression to Mr. Bell that was unpleasant?

A. I never heard her say anything to him, but I heard her say to others.

By the REFEREE: Do you mean in his presence?

A. He was in the house; not to himself, she didn't.

By the REFEREE: Was he there when Mrs. Bell said these things?

A. Yes, sir; he was not in the room.

Direct examination resumed by Mr. SEYMOUR:

I have been present when Mrs. Bell acted unpleasantly to Mr. Bell; he offered her wine at the table and she would not take any, and she acted ugly; I don't know as it was unpleasant; I don't know; I have seen her slam doors around the house when
100 she left the room where he was; I don't know whether it was an accident or willful; she has done it as she left the room where he was; when I lived there it was the habit for the front part of the house to be usually closed by Mr. and Mrs. Bell herself; when Mrs. Bell was out Mr. Bell did it; George used to sleep there, but William went home nights; the servants didn't close the front part of the house; it was always done by Mr. or Mrs. Bell; the servants would be in their part, and go to bed when they chose; in the front part of the house, where Mr. and Mrs. Bell lived, there is a hallway upstairs; the back part is closed off by itself, and the servants' rooms are in the back part; as you stood in the front hallway and looked towards the street, Mrs. Bell's room was on the right-hand side, and the guest rooms were on the left.

Cross-examination by Mr. WHEELER:

I was cook; my duties kept me in the kitchen; at times for a year, I made up Mrs. Bell's room and bed, and then they got a girl; then my duty was entirely in the kitchen; as a rule I did not even wait on the table, and of course I did not have the opportunity others had of observing the relations of Mr. and Mrs. Bell; there were times when Mrs. Bell appeared troubled about something, but I do not know what; I don't know whether she had just cause for it or not, because he always was the same at all times, and I do not pretend to say here; she was always ladylike in her demeanor; always very nice; at times she would be kind of excited, but she was always nice to me; she was excited, as though she was laboring under some secret trouble, but she never disclosed her troubles to me; on the occasion I made up the bed I remember getting bed-clothes out of her clothes-press; I never knew of Mr. Bell
101 being there but one night, and I remember getting bed-clothes to put on the bed; I got extra blankets, because it was cold,

I think; that is my impression; my present recollection; to the best of my recollection it was cold weather, and I put on extra blankets to make it comfortable; some one of the butlers were there at the time; which one I can't say; we had three different men; the third was a white man; I don't remember his name; the first butler's name was William, and the next George; he was a colored man; the next was the white man; the white man was not there more than a month, about a month; this occurrence was while George, the second man, was there; Maria came in May, and she took the place and did the work that some of the butlers had done before; prior to her was the white man, and then prior to the white man was this man George, and prior to him was William, who is dead.

Q. Did you ever see anything improper, in any way, shape or manner, in the conduct of Mrs. Bell toward Mr. Edward Bell?

A. Nothing in the way of being dishonorable to him.

Q. She treated him absolutely as she did others?

A. She was excitable at times.

Q. You mean excited with him?

A. Well, I don't know who she was excitable with; she acted nervous; I don't call that improper; I never knew anything improper with Mr. Bell; I remember the time that Mrs. Bell left, and they separated; I remember Mrs. Bell's going to Bloomington; before she left she said she was going for a visit, the first time, and after she was gone I remember some trunks coming in, and they were packed up by Mr. Bell; I mean her clothing and wardrobe; I remember her piano going out of the house, but I don't remember her trunks going; Mrs. Bell came back with her mother; she returned at nine o'clock in the evening; I remember her coming to the back of the house; I remember my greeting, and saying, "Mrs. Bell, we are glad you have come back before your things are gone;" I went to Pennsylvania, to testify for Mr. Bell in the case over there, to Brookville; I was sworn and testified at Mr. Bell's request; Mr. Bell was present; Mr. Seymour was present; they asked me nothing about packing up Mrs. Bell's things; I don't remember whether I volunteered to tell them about it, or speak about; after Mrs. Bell came back with her mother from Bloomington, she went up into the house; she went upstairs; I saw her again in the kitchen that night; I saw her the next morning; I did not see Mr. Bell that night; he was in bed; at least I don't know whether he was in bed; he was in the house; I don't know whether Mrs. Bell gained admittance to his room or not; the next day Mr. Bell went away. I don't remember whether it was a week or more when he came back; he did not come back while Mrs. Bell remained there; I don't know where the piano was taken.

102

Redirect examination by Mr. SEYMOUR:

To the best of my recollection the butler that was there the night when Mr. Edward M. Bell stayed there was George, the second one; I know it was a colored butler; I know it was not William; Maria

came in May, in 1882; I don't remember of testifying in Pennsylvania that the night that Mrs. Bell came back from Bloomington, in September, that Mr. Bell was at Niagara falls; he was away when she went away.

Q. How did you happen, as cook, to make up the bed that night for Mr. Bell?

A. Mrs. Bell employed me to do up her rooms during the time she had a butler. The butler used to do it, and they called him an old woman, and Mrs. Bell asked me to do up the bed-rooms, the man to do all the rest of the work; of course it was my duty to do up the bed-rooms any time she asked me during the time the
103 men were there; I don't remember any other reason why I made up the bed that night, unless it was the bed was not dressed; I don't remember of testifying in Pennsylvania on the trial of the action there between Mr. and Mrs. Bell that the reason why I made up that bed that night was because this girl Maria was absent, or that the reason why this bed was made up by me was because it was Sunday night, and it was Maria's night out; I don't remember whether it was Sunday night or Saturday night, but I remember of making up the bed, Mrs. Bell coming and asking me to make up the bed; I don't remember where Maria was that night; when Mrs. Bell saw me, on Thursday of this week, she asked me if I had been spoken to about this suit, and I told her no; I had been told nothing about it; I denied it then; I wasn't on my oath, and I told her I didn't know anything about it; that was all she did ask me; she asked me how long I was married, and she asked me if I remembered coming home.

Recross by Mr. WHEELER:

I made up the front bed-room. It was the pink room that was opposite to Mrs. Bell's room. It was the further room. The blue room was opposite Mrs. Bell's room.

Redirect by Mr. SEYMOUR:

When I made up this bed there were no pillows and no bed clothes on it, only a cover, and I put bed clothes and blankets, spreads and sheets on. Mrs. Bell never had the beds dressed, her extra beds, unless she was using them.

By the REFEREE:

Q. Who were the servants in the house that night, when you made up that bed?

A. As far as my best recollection, was a butler we had.

104 Q. In the house that night?

A. Yes, sir.

Q. You were there?

A. Yes, sir, I was there.

Q. Was there any other servant employed in the family?

A. No, sir, Mr. Bell never kept any other servant but a butler, a coachman and a cook. The butler's name was Joe Koons.

Q. Tell me just where this room was that you made up the bed with reference to Mrs. Bell's sleeping-room.

A. It was opposite her library; it was the front bed-room, and her library was on one side and this front room was on the other; her bed-room was in the back, on the north side and across the hall. I couldn't tell how many feet it was; it was the farthest room in the house away from that bed.

By Mr. SEYMOUR:

Her library was directly opposite this spare room, and the library opened into her room by an archway, so she could step right from the bed-room into the library. I don't remember whether there was anything hanging up between Mr. Bell's room and the library in the shape of a curtain; it was simply an archway. I think the door of this library into the hall was opposite the door of the spare room. I ain't sure. There was a door going out from the library into the hall and there was a door from her bed-room into the hall. The door was right opposite the spare room I made up, from the library.

ANSLEY WILCOX, sworn for defendant, testified:

I am a lawyer and reside in Buffalo. I resided here in 1883; this deed, dated November 17th, 1883, from Frederick A. Bell and Mary G. Bell, his wife, to Alfred Bell of Rochester, was prepared under my direction, at the request, I think, originally, of Mr. Rumsey. Frederick A. Bell probably in the first place spoke about it to Mr. Rumsey. I should say that I did not receive any in-
105 structions from Mrs. Bell about drawing this deed. I don't think I saw Mrs. Bell about it, at all. I cannot say positively that I advised Mr. Bell in relation to the description to be used in describing Mrs. Bell's residence. I think I drew it out of my own head. That is my recollection of the fact about it.

By the REFEREE: In other words, you assumed the residence of the parties was Buffalo, and directed the clerk to draw it in that way?

A. My recollection is, I directed it to be drawn in this way. As to the residence of Mrs. Bell, I put it in, not knowing where Mrs. Bell was, because I had no knowledge of Mrs. Bell having changed her residence.

Cross-examination by Mr. WHEELER:

I live in the same house now, myself. The diagram of the second floor of the house in question is approximately right, with the exception of the staircase in the hall is wrong. It is about eighteen feet from that door diagonally across to the other door, and the hall itself is nine feet eight inches wide.

FRANK A. RODGERS, sworn for defendant, testified:

I was the proprietor of the Genesee hotel in Buffalo up to the 7th of July, 1890, from April 1st, 1889. I remember the rooms Mr. Bell occupied there. They were on the third floor. This diagram is a

correct representation of his suite of rooms. The door that
opened when the bells were rung from his room opened into
front parlor on Genesee street, and this door was always locked w
a bolt on the inside. This door into the library was always loc
and bolted. I had occasion to go into these rooms more or less,
not any more than any other rooms in the house, and I kn
106 this to be so. In relation to the front parlor, the library,
bed-room, the location of the bed in the bed-room, and
bath-room, this is correct.

Diagram offered in evidence and marked Defendant's Exhibi

I don't know as I remember the head hall man by the name
Doyle, by his name. As proprietor of that hotel I never gave a
orders to the head hall man that none of the bell boys should answ
calls to Mr. Bell's room. It was the custom there that whenever
boy's turn came that was on duty he answered the bell. It did
make any difference whose room it was. It was not custom-
keep the front door locked of the ladies' entrance unless it was
severe cold day in winter. We always kept it open in warm weath
From the ladies' reception-room on the first floor to the hallway, t
doors opened. One opens right in front of the elevator and t
other opens into the hall coming from the door of the ladies' e
trance. That door opening into the hall was never locked.
might have been closed sometimes, but not very often. We made
a point to keep it open. I remember a lady that used to call at t
hotel, by the name of Mrs. Martin. Whenever she came to the ho
she always enquired for me, and if I wasn't there she never went
to Mr. Bell's room to my knowledge, and if I was there she alwa
wanted me to go up there with her, except when Mrs. Wisner ca
with her, and when Mrs. Wisner came with her, why, they went
together. When Mrs. Martin called alone I used to go with her
Mr. Bell's room and stay as long as she stayed. At such times M
Bell was sick; sometimes when the visit was over I would leave wi
Mrs. Martin, and sometimes she went out alone and I stayed.
never went out and left her there.

107 Cross-examination by Mr. WHEELER:

The door of the ladies' entrance to the hotel was locked abou
eleven o'clock until the washwomen came on in the morning, an
they unlocked it. No one could be admitted after that unless the
rang the bell. I say eleven o'clock, it might be later. It was afte
the theaters were closed. This door could not be opened unless on
went inside and unlocked the bolt. Those inside could open it an
pass out into the hall easy enough at any time. All I mean to sa
is that on some occasions Mrs. Martin called there, and I went u
to Mr. Bell's room with her. I have no knowledge of her comin
there at any other time. That is all I mean. I said Mr. Bell wa
sick, probably been drinking a little up in his room by himsel
drinking hard at times; that is what I mean when I say he was sick

By Mr. SEYMOUR: I wish to recall Mr. Edward M. Bell, and as

him one question. I think it is already in the case, but I simply wish to ask him in regard to that night when this incident occurred whether or not that was the only night he had ever stayed at this house.

By the REFEREE: I think he stated that.

Defendant rests.

MARIA TOOMAY, recalled by plaintiff.

I know Mr. Edward M. Bell, who sometimes used to visit Mr. and Mrs. Bell on Delaware avenue. I know him by sight. I went into the employ of Mr. and Mrs. Bell in May, thirteen years ago last Thursday. I done the upstairs and dining-room work. I mean the chamber-work and the dining-room work. I made up the beds and waited on the table. I stayed right along until the separation, and Mrs. Bell went to Bloomington, doing the same class of
108 work, as soon as I learned the going way of the house. Mrs. Bell went home after my first going there. She stayed about two weeks, then she came back. A lady and gentleman by the name of Sayles visited at the house after her return. When Mrs. Bell left shortly after I came there she went to her home at Bloomington, Ill., and stayed about two weeks, then came back, and after her return Mr. and Mrs. Sayles came and visited. I can't remember just how long after her return. I don't remember how long they visited. After they went away Mrs. Bell made a visit to Bloomington. That was in June, I think. It must be the last of June.

Q. When was it with reference to the separation?

A. That was September.

Q. Do you remember Mrs. Bell making a visit just before the separation?

A. She made a two weeks' visit. I almost think it was the last of June that time, and then she came home; I said that the other day. She let Maggie go for a six weeks' trip and that brought the time into the first of September when she went to Bloomington. She went twice to Bloomington before the separation and came back and found her things packed, and when she left the next time she went away for good. While I was there Mr. Edward M. Bell never stayed at the house over night to my memory. He never took breakfast there to my memory. I have no recollection about it—not a bit—I don't ever remember Ed. Bell sleeping in that house.

Cross-examination by Mr. SEYMOUR:

Q. You didn't know very much of what was going on in the house, did you, outside of the kitchen part?

A. Why, the house was very quiet; there was not ever very much going on.

109 Q. Did you ever live with anybody that you knew as little about as you do of Mr. and Mrs. Bell?

A. You see I didn't live there only a short time.

Q. How about that in comparison with other families?

A. That was about the quietest family I ever lived in.

Q. How about its being quiet as to your knowing what there was being done in the family part of the house?

A. They didn't receive any company or anything of that sort.

Q. You don't know anything about it, one way or the other?

A. No, I don't know anything about it.

Redirect examination by Mr. WHEELER:

I was there about a week when Mrs. Bell first went away.

Q. How long after you came there did Maggie take this six weeks' vacation?

A. Well, I was there a week. Mrs. Bell was gone too, and Mrs. Bell was home again, well, I will say about six weeks, as near as I can remember, that Maggie was home. Maggie went home in the middle of July, and she did not come back until the end of August; so that made six weeks. Maggie was the cook while I was there. There was another cook during her absence—the six weeks. She was Abby Barrett. I did not have any day out. I did not have much of any night out. I went every Sunday to church, morning and evening. The cook and I would have alternate Sundays. There was nothing to be done with the chamber-work until I got back, about half past nine or ten, never later than that.

Recross:

If a bed had to be made up before I got back at 9 or 9.30, the cook would have to do it.

Redirect:

But I would have to make up the bed next day and wait on the table next morning.

110 EDWARD B. GRIDLEY, recalled for plaintiff:

I remember a visit made by Mrs. Bell in Bloomington some time in May or June, 1882; to the best of my recollection it was the last week in May, 1882; she stayed about two weeks and then returned to Buffalo. Prior to that, during the winter of 1882, my mother was home in Bloomington. I am not positive about that. She was in Buffalo during the winter of 1882.

MARY G. BELL, the plaintiff, sworn and testified:

I am the plaintiff in this action, and acquainted with Mr. Edward M. Bell. The book shown me is my diary for 1882. It is one in which I made daily entries, probably not every day, because I sometimes would neglect putting in every day, but in that book I was accustomed to make entries from day to day. I entered them correctly. I do not think I could positively testify to the dates of transactions and occurrences in 1882 without those entries, but by reference to that book I am able to do so. My mother made me a visit in 1882. She was at the house in January and February, and I think she went home in March.

Q. Won't you refer, if you please, to your diary under date of March, 1882?

(Witness refers.) A. There it is, sir.

Q. Is there any entry there in reference to your mother's departure? Refer to the book to refresh your recollection and testify to what you did on that day.

Mr. SEYMOUR: I object to that; to any evidence against us contained in that journal, and also on the ground that it is incompetent, irrelevant and immaterial. I object to the witness reading from the journal. She is prohibited by the statute from testifying against her husband.

111 By the REFEREE: She is only permitted to read from the journal to refresh her recollection.

Defendant excepts.

A. There is an entry there in reference to my mother's departure. (Witness reading from diary.) "Nice, pleasant morning. I took Fred down in phaeton. Joseph walked down and drove Billy back, as I had some errands"——

Q. Who is Joseph?

A. The coachman.

Q. And what was "Billy"—the horse?

A. The horse.

WITNESS: "Stopped at bank, drew out $100 to take home with me. Telegraphed Ned that they would have to leave today"——

Q. Who is Ned?

A. My brother.

Mr. WHEELER (reading): "Stopped at market. Stopped to say good-bye to Mary Utley."

Q. She was a friend of yours?

A. Yes, sir, Mrs. Charles Utley of Buffalo.

Q (Reading:) "Came home, finished packing, had our lunch. Went in carriage to office, where Fred met us and went to depot with us. Got a state-room, nice and very comfortable. Fred saw us off. Mother and I took supper at Cleveland. Slept pretty well." Are all those entries true?

A. It is, sir.

Mr. WHEELER: It goes on and speaks of her journey.

By the REFEREE: There are entries showing she remained in Bloomington with her mother down to what time?

Mr. WHEELER: March 30th.

By the REFEREE: Is there an entry showing she left Bloomington for Buffalo?

Mr. WHEELER: Yes, sir. Tuesday, the 28th of March, is the entry I refer to.

112 Q. Did you leave Bloomington on that day?

A. We started on the "Denver" for Chicago. It must have been after leaving Bloomington, because the "Denver," as it is called, goes down to Chicago and passes through Bloomington.

Q. (Reading:) "Went to Gossage's."
A. That is a dry-goods firm where we had our dresses made.
Q. (Reading:) "Had dresses fitted. Did not sleep very well at Grand Pacific, as the wind blew very hard all night. The next day, March 28th, Albert met me." Who is Albert?
A. My little brother.
Q. (Reading:) "At Gossage's. He saw me safely on train for home. I left at 5.15 on Lake Shore for Buffalo. Slept pretty well on cars. Retired at 9.30." Is that correct?
A. It is.

Mr. SEYMOUR: This is all under my objection.
By the REFEREE: Certainly.

Q. Now, March 30th, can you tell me where you were, or what you did?
A. Yes, I was at Cleveland, and breakfasted at Cleveland. A lady friend from New York was on the train, and she came and sat with me. I remember that very well. It was Mrs. Bemis.
Q. (Reading:) "Had her come and sit with me. Arrived at depot. Fred met me and seemed glad to see me. Had a nice lunch. Mrs. Ganson had flowers on table." In the evening what did you do?
A. (Referring to diary.) "In the evening Fred and I talked, and we retired at about nine that evening."
Q. Did any one call in?
A. Mrs. Walter Cary called in the afternoon.
Q. What was done the next day?
A. I cannot state unless I should read it.
Q. Go on and read it.
A. "The next morning"——

113 By the REFEREE: I hardly think that course of examination is permissible. All you want Mrs. Bell to do is to refresh her memory.

Q. That day did you drive to the asylum with Fred?

Mr. SEYMOUR: Why can't you leave that out? It seems to show she was here.

Q. After dinner what occurred?
A. "Mrs. Ganson called. Fred and I drove out to the asylum to see Harry Lewis. Fred went in. I held the horses. Had a nice drive. Returned home. After dinner I read to Fred. He slept. We retired about ten. Lovely moonlight night."

Mr. SEYMOUR: Is that all competent to go in?
By the REFEREE: If Mrs. Bell can show she was not possibly in a position, and that the incident claimed could not have occurred, she has a right to do it.
Mr. WHEELER: That is the object of this evidence.

Q. (Reading:) "April 1st: Lovely bright spring-light morning. Drove down with Fred. Joseph walked down and drove me back.

Mrs. John Bush called in the evening. Fred didn't go to club. Went with me to see Mrs. Stevenson." Was that true?

A. Yes, sir.

Q. (Reading:) "Sunday, April 2d: After dinner," it says, "Kate, George and Alfie called." Who were they?

A. Mr. Bell's sister and her little son, Mrs. George H. Lewis and her husband.

Q. (Reading:) "After they left, about six, Fred went to club for about two hours. I went over to call on Mrs. Brown. They both leave for the South tomorrow." Who is that?

A. Mrs. Nathaniel Brown of North street.

Q. (Reading:) "Monday, April 3d: Fred brought Alfred McCall up to dinner. He stayed all night. In the evening he and
114 Fred went to see Emmett." Who was Alfred McCall?

A. I think he was a cousin of Mr. Bell's.

Q. Do you know where he lives?

A. No, sir; I do not.

Q. (Reading:) "Tuesday, April 14th: Mr. and Mrs. Charles Ganson spent the evening with us." They live on the corner of North and Delaware avenue?

A. Yes, sir.

Q. (Reading:) "Wednesday, April 5th: Made a mistake. Commenced today and not yesterday. Thursday, April 6th. Went down with Fred in phaeton. He came up to lunch. Left for mine at two. I went in carriage to depot with him, and then attended cooking school, and then went to Mary Utley's to dinner; came home in her carriage about nine. Had a sore throat and headache. Received invitation to Mrs. Hamlin's Tuesday night. April 7th, Friday: In the evening I went with Mrs. Charles Ganson down to hear Mrs. Parloa lecture on marketing. Very good. I was much interested in it. Received Easter card from Colorado Springs. Saturday, April 8th: Went to market; went to bank and drew $50.00. Went to Mrs. White's sale of fancy articles, and I bought two aprons and servettes. After lunch went in bus to cooking school and Joseph came for me in carriage. Ned Bell took dinner with me, and after he left Mr. McNabb and Robert called." Who were they?

A. I think Mr. McNabb was in Mr. Bell's office, and Robert was Robert Chisolm, some relation of Mr. George H. Lewis.

Q. (Reading:) "Sunday, April 9th, Easter. I attended church. Church looked lovely. Came home; had lunch. In the evening took dinner with Mr. and Mrs. Ganson. April, Monday, 10th: In the evening Mr. and Mrs. Ganson called. I felt badly with
115 sore throat. Dr. Hoxsie called and said I had something like quinzy. At midnight Fred surprised me by arriving home. I was not expecting him until tomorrow night. Tuesday, April 11th: In afternoon Mrs. Dutton and Mrs. Bronson of Rochester, and Mary Utley all called. In the evening Fred had sherry and champagne; drank freely of both. Afterwards wanted to go down to Mrs. Dutton's. We all went down. He and Emma did most of the talking. We returned at 10.30 o'clock. He and Emma played

billiards. Wednesday, April 12th: We had lunch, and when it was time went to depot. Fred went with us and bought her ticket (referring to Mrs. Bronson of Rochester). In the evening Fred drank five glasses of sherry. We went to the children's fancy dress party at Goodell hall. Mr. Palen invited us. There until 10.30. Thursday, April 13th: Had Dr. Hoxsie. Fred came up at ten minutes after five and found me crying and sick. I took medicine, and in the evening went to theatre to see Mlle. Rhea with Fred. Friday, April 14th: Invited Ned Bell to dine with me and to go and hear Rhea in 'Much Ado About Nothing.' He came, and we went to the theater."

By the REFEREE: That is correct?

A. Yes, sir.

Q. (Reading:) "Saturday, April 15th: Went to depot. Fred came up to lunch. Had lunch and Fred drank a bottle of beer and then went to sleep on the lounge. Says he is going to New York Monday night. Won't let me go with him. Went downtown a quarter of four. *He* came up late to dinner."

Mr. SEYMOUR:

Q. The *he* is underscored. Whom did you refer to?

A. Mr. Fred Bell. It is rather a custom of mine to underscore words.

Q. That is the only *he* that is underscored?

A. Yes, sir.

Mr. WHEELER:

116 Q. (Reading:) "Sunday, April 16th: Fred and I took a drive, and after our return George, Harry and Robert called." Who is Harry?

A. Harry Lewis, Mr. George Lewis' brother.

Q. Who was "George"?

A. George H. Lewis.

Q. And who was "Robert"?

A. A cousin or nephew of Mr. Lewis.

Q. (Reading:) "They left about six. Fred said he was going to club. I said I would go with him. I walked down, went to Tifft house and called on Mrs. Bingham. They were just going in to supper. Made me go too. Stayed until half past nine. Ordered Miller's coupé and came home. Fred hadn't come yet. I waited around until I heard him come in, at twenty minutes after ten. He came in and got a lunch. I took two glasses of beer and was terribly sick at my stomach."

Q. (Reading:) "Monday, April 17th: Left at two p. m. He went to depot with me. Got me a ticket. Kissed me. Arrived at R. safely. Sadie met me. In evening Mr. and Mrs. Babcock called."

A. That was at Rochester. I called on Sadie Breck.

Q. Then were you in Rochester until Thursday, the 20th?

A. Yes.

Q. (Reading:) "Arrived in Buffalo in time. Didn't let them know I was coming, so came up in stage, and found two letters from

dear ma. It rained after three. Went in carriage to Miss Nicell's. Went from there to Chamot's. Came home. Had dinner. Afterwards sat down and done some mending on Fred's drawers." Is that what you did in the evening?

A. Yes, sir.

Q. (Reading:) "Friday, April 21st: Went to cooking school. In afternoon took carriage and went out to see Mrs. Adams." Who was that?

A. Mrs. James Adams, on Ferry street.

117 Q. "Came and got Mrs. Walter. Went downtown; asked Ned up to dinner. George went to colored ball." Who was George?

A. The colored butler.

Q. Who was Ned?

A. Edward M. Bell.

Q. Next was Saturday, April 22d: "Fred left this morning early and knocked on my bed-room door before I was up. He said George hadn't arrived yet. He said, 'I guess he has left for good.'" You refer to the colored butler?

A. Yes, sir; he hadn't arrived in the morning.

Q. (Reading:) "Went downtown in carriage four p. m. Came back and found George up in his room, drunk. After dinner Fred went to meeting of Beaver Island Club Association. Afterwards. went to Buffalo Club. Didn't get home until after half past twelve. Sunday, April 23d: George waited on table, but looked so guilty. George said he would go and ask Mr. Bell to pay him. Fred told him to go and do up his work and then told him he wished he would get a good place, which he did not doubt he would. Kate, George, Alfie and Harry called. About a quarter to ten he came in. Said he had been to the club. He had some lunch and went to bed. Tuesday, April 25th: Fred came home at half past five with Joseph, in phaeton. After dinner he went to Tifft house to make a call on a gentleman from Philadelphia, a Mr. Goodman." Wednesday, the 26th, and Thursday, the 27th, no entries. "Friday, April 28th: Fred and I tried new buggy this afternoon for the first time. It is very pretty and rides nicely. Saturday, April 29th: Took a drive in the new wagon; in the evening Fred went to club and remained until eleven. George and Kate went this afternoon to Rochester. Sunday, April 30th: A pleasant day. Did not go to church. Fred went in carriage to depot to meet Tillie."

118 Who is Tillie?

A. Tillie is Mr. George H. Lewis' sister, I think.

Q. Do you remember her other name?

A. No.

Q. "Harry and Robert came up to dinner, after which Fred took Harry out in new wagon. Tillie took a nap. Monday, May 1st: Fred and I took a drive in new wagon. In the evening Dr. Van Bokkelen called. The new butler came to work for us today. Robert was down. Tuesday, May 2d: Fred didn't come up until after six. He had been taking a little. Said he had not been doing much this afternoon but fooling around. Said he played pool at

the City Club and rode as far as the Buffalo Club and walked hom
from there. He had beer for dinner. Mr. Ganson called after h
left Fred and I went over to see Joseph's baby. It was very sick
Was that the coachman?

A. Our coachman.

Q. "Wednesday, May 3d: In the afternoon we took a drive i
the new wagon. In the evening Fred went to the club again
Goes to mines tomorrow with George. While he was at club
went into Mrs. Stevenson's. Mrs. Roesser called while I was ove
there." Who was she?

A. Mrs. Henry Roesser. Mr. Henry Roesser was at one tim
manager of Pierce's Palace hotel, where we were living.

Q. "Thursday, May 4th: Fred packed his valise. Joseph too
him down to office. Said he wouldn't come to lunch, as I wa
going to Mrs. Bush's to lunch. George and he go to mines at tw
o'clock. Joseph took me in phaeton to Mrs. Bush's. Mrs. Georg
Laverack and others sat down to table. Came home at four o'cloc
Called in to see Mrs. Scatcherd, to see how Mr. S. is. Mrs. S. sai
he was better. Friday, May 5th: In the evening made a square fo
my quilt. Saturday, May 6th: Came home to dinner, afte
119 which I went to Mrs. Stevenson's until nine. Came hom
and went to bed. Invited all the boys in the office up t
dinner tomorrow. Sunday, May 7th. After they had gone half a
hour, who should call but Mr. and Mrs. James Junk, of Liverpoo
England." What time did you dine on Sunday?

A. I think it was near noontime, because we always had luncheo
in the evening.

Q. Have you any recollection how long the boys stayed?

A. Generally stayed an hour or two, and sometimes longer.

By the REFEREE: From hearing that entry and the circumstance
that those people were to dinner, does that refresh your recollectio
as to anything that occurred from that time forward in the evening

A. No, sir.

Q. "Monday, May 8th: In the evening I went over to Mrs. St
venson's and worked on my quilt, Mrs. Stevenson helping. Cam
home at a quarter after nine. Tuesday, May 9th: In the afternoo
went in phaeton to Mrs. Adams'. Came home. In evening Ne
took me to see the 'Two Orphans,' Kate Claxton and a Miss Drak
of Buffalo."

Q. Did they play in that play?

A. Yes, sir. He asked me to go because it was a Buffalo girl tha
was going to play.

Q. "Wednesday, May 10th: In the evening I sat down an
worked on my patchwork. Thursday, May 11th: At three o'cloc
the telephone rang and Mr. Bell telephoned for Joseph to come dow
for him at half past five."

By the REFEREE: From that you know now, do you, that M
Bell came home at that time?

A. Yes, sir.

Q. "He went to bed. I sat alone in the parlor to nin
120 Friday, May 13th: Fred came up about a quarter to si
After dinner went to a reception at Buffalo Club, given t

old Mr. Fitch. He said he would be home at eleven. Told me to go to bed. I did, and he came home at a quarter to one. Saturday, May 13th: Fred came up at about half past five. In evening we went to San Francisco Minstrels." Is that so?

A. Yes, sir.

Q. "Sunday, May 14th: After dinner we went for a drive. When we got home Fred went to club and stayed until half past nine. Goes to Rochester tomorrow, to be gone until Wednesday. Monday, May 15th: In the evening I took my patchwork and went over to Mrs. Stevenson's. About nine came home and went to bed. Tuesday, May 16th: No reference to evening. Wednesday, 17th: Fred arrived home from Rochester. Thursday, May 18th: Fred went to mines this afternoon with George. Friday, May 19th: No entry about evening. Saturday, May 20th: Fred returned from mines this evening. Sunday, May 21st: In evening walked over to George's." That is Mr. Lewis?

A. Yes, sir.

Q. "Walked back. Fred had to feed and water the horses. Monday, May 22d: Fred came up early and stayed with me all evening. Going to see dear ma and sweet home tomorrow. Tuesday, May 23d: Took Fred downtown. Joseph took me in carriage, to depot. Stopped at office, and Fred went with me to depot. Mr. Cutter and son and daughter, and Mr. Van Bokkelen went at the same time."

By the REFEREE: You went to Chicago on the way to Bloomington?

A. Yes, sir.

Q. "We took supper at Cleveland. I retired about half past eleven." Is that the day you left for Bloomington?

A. Yes, sir.

121 Q. Do you remember when you returned from Bloomington on that trip?

A. I am not positive, but it seems to me it was the 7th, 8th, or 12th of June. I don't remember.

Q. Under June 9th there is an entry: "Left 5.15 for Buffalo." Is that so?

A. Yes.

Q. "Saturday, June 10th. Arrived at Buffalo on time. Fred met me. We went out for a drive. In the evening he went to the City Club, to a business meeting, he said. Told me to go to bed. I went over to Mrs. Stevenson's for a little while and came home and went to bed. He came home at ten minutes after ten." Is that true?

A. Yes, sir.

Q. "Sunday, June 11th: In the afternoon went for a drive. Stopped at George's and Kate's. In the evening the boys called. We stayed on the piazza until nearly nine." Who were the boys?

A. We generally spoke of the boys; they were Harry Lewis, Robert Chisholm, Mr. McNabb and Ned Bell. They often came together, and sometimes they didn't.

Q. "Monday, June 12th: Took a drive." No reference to the evening. Tuesday, June 13th, no reference to the evening. "Took

Fred down in the morning." Wednesday, June 14th, no reference to the evening. "Friday, June 15th: Fred went to Rochester on the early train. Came home and had lunch; at about half past five came up; after dinner we went for a drive. Spent the evening at home; he complained the first thing about the screens at the windows being changed." Who do you refer to by saying "he"?

—. ——.

Q. "Saturday, June 17th: Took Fred downtown this morning. After dinner we drove in the phaeton with Billy and Polly." What were Billy and Polly?

A. They were the two horses.

Q. "Came home. He immediately set out to club. I went
122 up to Mrs. Tripp's. Mrs. Smith came home with me. Fred returned from club at twenty minutes to twelve. It was raining. Sunday, June 18th: He went out to barn and watched horses clipped. After dinner went down to the office. I went over to see Mrs. Brown. He came home a little after I did, at half past five. We took a long drive. In the evening Mr. H. Richmond and Colonel Robert Jones called. Fred packed his satchel before going to bed, and in the night had a thunder shower. Monday, June 19th: Fred left at eight. I took him down in the phaeton; came home. Went to call on Mrs. Charles Ganson, and from there to Dexter Rumsey's. Tuesday, June 20th: Went to depot for Mr. and Mrs. Sayles. Wednesday, June 21st: Mr. and Mrs. Dexter Rumsey called." Where do Mr. and Mrs. Sayles live?

A. Providence, Rhode Island.

Q. Very old friends of yours?

A. Yes, sir, very dear and old friends.

Mr. SEYMOUR: This is all under my objection.

Q. Mr. and Mrs. Sayles were at your house that day?

A. Yes, sir.

Q. What rooms did they occupy?

Mr. SEYMOUR: This is under my objection.

By the REFEREE: Yes.

A. The guest chamber opposite our bed-room.

Q. That is the room mentioned by Mr. Bell?

A. The blue room was the room opposite our bed-room, and the pink room was in the front part of the house, and our room was in the back part of the house. This best-guest's chamber was also the back one.

Q. During their stay there did they occupy that room over night?

A. Yes, sir.

Q. "Thursday, June 22d: At four went to Niagara Falls; returned at 11 p. m." Is that correct?

A. Yes, sir.

123 Q. "Friday, June 23d: After lunch we went to Ferry street where we met Mr. and Mrs. Rumsey, where we went to Fairwood. Fred arrived at ten. Came up to lunch. We came up

at seven. In the evening we sat on the piazza and visited. Mr. and Mrs. George Williams called. Saturday, June 24th: Had dinner at six and a half p. m. Mr. Sayles returned from Lockport at six. We sat on the piazza until a thunder shower drove us in. Sunday, June 25th: Fred went down to Buffalo Club. Came back, invited Mr. and Mrs. Lewis to drive. We had lunch about ten, of teal ducks. Monday, June 26th: Fred took his satchel and took Mr. Sayles to depot. He goes to mines at two. Mrs. Sayles packed her trunk this morning. We drove to market. Took Mrs. Sayles to depot. They left at 2.25. Fred left by the W. N. Y. & P. R. R., at two. After dinner went to see Mrs. Stevenson; met Miss Bemis there, who was calling also, and came home. Mr. and Mrs. Ganson had called. Retired early."

Q. That was the day Mrs. Sayles left for home?

A. Yes, sir.

Q. "Tuesday, June 27th: After dinner sat on piazza. Mr. McNabb, Robert Chisholm and little George called, also Judge and Mrs. Daniels."

Q. What time did you have dinner?

A. In the evening, about six o'clock.

Q. "Wednesday, June 28th: After lunch went in carriage to Church Home festival; stopped to see Mrs. Brown. Took supper. Dr. Van Bokkelen talked with me. I brought him home in carriage. Thursday, June 29th: After dinner walked over to see Louise Adsit at Mrs. Brown's. Came home. Mrs. Warren called me over to the house. Mr. and Mrs. Warren both walked home with me, and came in. Showed them the house. They stayed
124 a while. Ed Bell called, and after Mr. and Mrs. Warren went, he and I walked over to the Homœopathic Hospital fair about nine o'clock. Stayed only a few minutes and came home; sat on the piazza until nearly eleven, when he left. A lovely, moonlight night." Is that true?

A. Yes, sir.

Q. "Friday, June 30th: It rained. I went over to Mrs. Stevenson's. I took my two scrap-books. I came home and walked down to Allen street, and bought an evening paper. Played on the piano until bedtime. Saturday, July 1st. After lunch Fred telephoned me from the office to have Joseph come to him at half past three. He arrived at noon.'

Q. Then comes "Sunday, July 2d: After dinner Fred laid down on lounge in my room, while I read to him. Then took a drive. Came home, and Fred went down to club for an hour. Went into Mrs. Stevenson's for a few minutes, had lunch when Fred returned, and retired. July 3d, Monday: Fred came home at half past five. After dinner Fred and I took a drive to the park and stopped at Kate's for a few minutes. Then we drove down Main street and saw the decorations. Came home and retired about ten. Tuesday, July 4th: Fred, George and Harry came in time to see it (the procession). Fred went down to club. Alone after dinner, until after seven, when he came up in an open carriage with A. P. Wright. Went with him to Buffalo Club reception."

Q. How did those sheets come to be torn out of here taken out o the book?

A. I tore them out.

Q. For what purpose?

A. To send them to you.

Q. At whose request?

A. At yours.

Q. Now, Mrs. Bell, you heard Mr. Edward M. Bell testify here in reference to an occasion which he claims that he stayed one night with you?

A. Yes, sir.

125 Q. Was there ever any such occasion?

A. Never, never.

Q. Did you ever have any criminal intercourse with him, either on such occasion, or any other?

A. No, sir, never.

Q. Can you tell from this diary, by refreshing your recollection, the different times or dates that Mr. Bell called at your house?

A. Mr. Ned Bell?

Q. Yes.

A. Yes.

Q. Have you got a memorandum?

A. From that diary?

Q. Yes.

Q. Can you tell the dates?

A. Yes, sir. (Refers to memorandum.) "Sunday, January 15th; Sunday, January 29th; Saturday, February 4th; Wednesday, February 15th; Sunday, March 5th; Saturday, April 8th, Fred was away; Friday, April 15th, we went to see Rhea in 'Much Ado About Nothing.' Friday, April 21st; Fred arrived home early the next morning."

Mr. SEYMOUR: This is all under my objection.

"Tuesday, May 9th, we went to see the 'Two Orphans.' Thursday, June 29th, went to Homœopathic Hospital fair. Sunday, July 16th; Friday, July 21st, Monday, July 24th, when he ran in a few minutes to say good-bye; some young people were with him at the gate."

Q. Are those the only occasions he was there?

A. Yes, sir.

Q. From the first of January, 1882, up to August?

A. Yes, sir.

Q. Did Mr. Ed. Bell at any time, while you were living at this house on Delaware avenue, stay over night?

A. Yes, sir; I think he did.

Q. Do you remember when it was, about when?

126 A. Well, we had not been housekeeping very long, and I was so timid, being left alone so much, Mr. Bell's business seemed to take him away, and I spoke to him about it, and he said, "You need not be afraid, because I will always get some of the boys to stay nights, if you are afraid to stay alone."

Mr. SEYMOUR: This is all under my objection.

Q. Was that prior to January 1st, 1882?

A. Yes, sir.

Q. Can you also state, from an examination of your diary, the dates and times when Mr. Bell was away, and the dates of his return?

A. Yes, according to my memory, being refreshed by my diary, I made a copy of that this morning.

Q. Go on and state during the year 1882. What memorandum have you there?

Objected to by defendant's counsel, on the same grounds as before.

A. I copied this from my diary: "Monday, January 5th, 1882: Went to Rochester, and returned the 7th, Saturday. Wednesday, January 18th: Went to mines and returned Saturday, 21st. Thursday, January 26th: Went to Rochester and returned Saturday, the 28th. Wednesday, February 1st: Went to Rochester, Philadelphia and New York, and returned Thursday, February 9th. Monday, February 13th: Left for mines and returned Wednesday February 15th. Monday, February 20th: Left for Montreal, returned Wednesday, March 1st. Thursday, April 6th: Left for mines and returned Monday, April 10th. Saturday, April 14th: Left for Rochester, returned Sunday, April 15th. Thursday, May 4th: Left for mines and returned Thursday, May 11th. Monday, May 15th: Left for Rochester and returned Wednesday, 17th. Thursday, May 18th: Left for mines and returned Saturday, May 20th.
127 Thursday, June 15th: Left for Rochester and returned Friday, June 16th. Monday, June 19th: Left for New York and returned Friday, June 23d. Wednesday, July 19th: Left for Rochester and returned at 7.40 the same evening. Friday, July 21st: Left for mines and returned Wednesday, July 26th. Friday, July 28th: Left for Rochester and returned the same evening. Friday, August 11th: Left for Rochester.

Q. Does that give all his visits and times?

A. I believe so, according to my diary.

A recess was here taken until May 21st, 1895, at 10 a. m.

Proceedings of Tuesday, May 21st, 1895, 10 a. m.

Cross-examination by Mr. SEYMOUR:

I made these entries on the day they occurred, the same day. Sometimes at the end of the day, sometimes at noon and sometimes in the afternoon, generally before I retired in the evening. I kept a journal part of the time in 1881, and I think I did in 1880 and in 1879; it was my custom to keep a diary. It was almost, if not fully, one year before I went to Bloomington for good, in September, 1882, that Mr. Bell and I had ceased to live as man and wife, I went home about the first of September, 1882, so a year backward from that date would be about the first of September, 1881.

Mr. SEYMOUR: It appearing by the proof that the adultery alleg to have been committed by the plaintiff with Edward M. Bell curred at some other date than as alleged in the amended answe move to have the amended answer amended, by having the wo "or some time in the spring of 1882" added after the allegati that the adultery occurred in June.

Plaintiff's counsel objected. Amendment allowed by the co

128 FRANK T. WILLIAMS, sworn for plaintiff, testified:

I am an observer in the Weather Bureau in the city of B falo, and have been stationed here since 1881. I was here in 18 I have here the record of all the observations from 1880 to 1885, t state of the weather, the temperature, and the like of that, and atm pheric conditions, made at the White building, in the city of B falo. The maximum temperature for Saturday, April 8, 1882, w 51, the minimum 38. It was generally pleasant; had no rainfall all. Friday, April 14th, maximum temperature was 38, minimu 33; had a light snow from 2.45 to 5.30 p. m., too small to measu Friday, April 21st, maximum 43, minimum 36. There was ra on the 21st; greatest quantity occurred during the night record at 7 o'clock in the morning. There was a trace of rain in the fo noon, at 10.10 to 10.20, that was too small to measure. No m rain that day. It cleared up that night. On Tuesday, May 9 maximum was 63, minimum $46\frac{1}{100}$ of rain recorded, that occurr during the night between eighth and ninth. Then we record unappreciable rain falling from 3.50 to 3.55 p. m. There was more rain that day. Thursday, June 9th, maximum 73, minimu 58. It was a fair day, without rain at all for entire 24 hours. Su day, July 16th, maximum 80, minimum 59. It was fair, witho any rain. These records are from 11 o'clock at night to 11 o'clo the following night. Friday, July 21st, maximum was 70, mi mum 61. There was a trace of rain from 6 to 6.10 a. m. That w the only rain for the day. Monday, July 24th, maximum 74, mi mum 67. It was clear, no rain at all.

129 Cross-examination by Mr. SEYMOUR:

It often occurs that there is a brisk shower in Black Rock and n shower here, and it is very true that a shower will occur in th upper part of the city and no shower at the White building, an unless the rain was falling upon the White building, where ou apparatus is, we would have no indication of it.

It is admitted by the defendant that the original answer allege "adulteries" on the part of the plaintiff.

Counsel summed up. At the close thereof the following pr ceedings occurred:

Mr. SEYMOUR: I ask leave to open defendant's case, and call M Bell, and I offer to show by him that he did not read the joint pet tion for the probate of his mother's will, signed by himself and hi sister. I also offer to show that he was told by his attorney, wh drew the petition, that it simply stated the facts of his mother'

death, residence, etc., and that he did not know that it contained any reference to his own residence; that he would not have made the affidavit had he known the petition stated he was a resident of this State, because such was not the fact.

Mr. WHEELER: I object on the ground that it is not for the defendant to open his case at this time and also on the ground that under the provision of the code defendant would not be a competent witness.

By the REFEREE: If I thought it were of any importance in defendant's case, I would allow you to open it, but I do not think the testimony of any importance. I also sustain plaintiff's objection on the ground that the testimony included in the offer is incompetent, but not on the ground that it is too late.

Exception *to* defendant.

130 The foregoing is all of the evidence taken, and the proceedings had upon said trial, and because none of the same do appear upon the records of this court, the defendant has caused this case to be made to the end that it may be fully considered by this court; and it being settled as above, it is hereby ordered to be filed in the office of the clerk of the court.

SPENCER CLINTON, *Referee.*

January —, 1896.

Supreme Court, Erie County.

MARY G. BELL, Respondent,
against
FREDERICK A. BELL, Appellant.

It is hereby stipulated by and between the attorneys for the respective parties hereto that the foregoing copy of the pleadings, case containing exceptions, and of the judgment-roll, opinion and findings of the referee, and exceptions to said findings, judgment and notice of appeal to the general term, are true copies of said originals now on file in the office of the clerk of the county of Erie.

Dated January 18, 1896.

HENRY H. SEYMOUR,
Attorney for Appellant.
CHAS. B. WHEELER,
Respondent's Attorney.

131 Supreme Court, Appellate Division, Fourth Judicial Department.

CLERK'S OFFICE, ROCHESTER, N. Y.

I, Newell C. Fulton, clerk of the appellate division of the supreme court, in the fourth judicial department, do hereby certify that the foregoing is a copy of the order made by said court upon the appeal in the above-entitled action or proceeding, and entered in my office on the eighteenth day of April, 1896, and that the original case or papers upon which said appeal was heard are hereunto annexed.

In witness whereof, I have hereunto set my hand and
[L. S.] affixed the seal of said court, at the city of Rochester, this twenty-third day of April, 1896.

NEWELL C. FULTON, *Clerk.*

132 At a term of the appellate division of the supreme court, held in and for the fourth judicial department, at the city of Rochester, on the 18th day of April, 1896.

Present: Hon. George A. Hardin, presiding justice; Hon. David L. Follett, Hon. William H. Adams, Hon. Manly C. Green, Hon. Hamilton Ward, associate justices.

MARY G. BELL, Respondent,
against
FREDERICK A. BELL, Appellant. } Order of Affirmance on Appeal from Judgment.

The above-named Frederick A. Bell, appellant in this action, having appealed to the appellate division of the supreme court, from a judgment of the supreme court entered in the office of the clerk of the county of Erie, on the 3d day of July, 1895, and the said appeal having been argued by Mr. Henry H. Seymour, of counsel for the appellant, and by Mr. Charles B. Wheeler, of counsel for the respondent, and due deliberation having been had thereon: It is hereby ordered and adjudged that the judgment so appealed from be and the same *are* hereby affirmed; and the respondent recover of the appellant the cost of this appeal.

Opinion by Follett, J.

[L. S.] NEWELL C. FULTON, *Clerk.*

133 Supreme Court.

MARY G. BELL, Plaintiff and Respondent,
against
FREDERICK A. BELL, Defendant and Appellant. } Judgment.

The defendant, Frederick A. Bell, having appealed to the general term of the supreme court for the fourth judicial department, from a judgment entered in the above-entitled action, in the office of the clerk of the county of Erie, on the 3d day of July, 1895, in favor of the plaintiff Mary G. Bell, and against the said defendant Frederick A. Bell; and said appeal having been brought to a hearing upon a case containing exceptions, at a term of the appellate division of the supreme court for the fourth judicial department, held at the city of Rochester, on the 4th day of March, 1896; and said appeal having been argued and submitted, and said court having, on the 18th day of April, 1896, handed down its decision affirming said judgment with costs, and entered its order to that effect:

Now, therefore, upon filing the remittitur from said court in accordance with said decision, and upon motion of Charles B. Wheeler, Esq., attorney for the respondent, it is hereby ordered, adjudged and decreed, that the said judgment so appealed from in this action, signed and entered on the 3d day of July, 1895, in the

office of the clerk of the county of Erie, be and the same hereby is in all things affirmed.

And it is further ordered, that the said respondent, Mary
134 G. Bell, recover of and from the appellant, Frederick A. Bell, her costs of said appeal, which have been taxed and adjusted at the sum of ninety-nine dollars and eighty-five cents ($99.85), and that she have execution therefor.

Judgment signed this 28th day of April, 1896.

F. B. STEELE, *Dep. Clerk.*

Supreme Court.

MARY G. BELL, Respondent,
against
FREDERICK A. BELL, Appellant.

SIR: You will please take notice that the annexed is a true copy of a judgment, on this 28th day of April, 1896, filed and entered in the office of the clerk of Erie county.

Dated, Buffalo, April 28, 1896.

CHAS. B. WHEELER,
Attorney for Plaintiff and Respondent, 117 Erie County Savings Bank, Buffalo, N. Y.

To H. H. Seymour, Esq., attorney for the defendant and respondent, 12 Hayen bldg., Buffalo, N. Y.

135 Supreme Court, Fourth Appellate Division.

MARY G. BELL, Respondent,
against
FREDERICK A. BELL, Appellant.

Argued March 4; decided April 18, 1896.

Hardin, P. J.; Follett, Adams, Green, and Ward, associate justices.

Appeal from a judgment of divorce on the ground of adultery, entered on the report of a referee.

December 22, 1894, this action was begun by the personal service of the summons and complaint on the defendant at the city of Buffalo, for the purpose of obtaining a judgment of divorce on the ground of his alleged adultery. The defendant appeared and filed an answer, in which he denies the commission of the acts of adultery alleged in the complaint, and sets up two affirmative defences: (1) That on the 8th of January, 1895, the marriage of the parties was dissolved by the court of common pleas, in the county of Jefferson, in the State of Pennsylvania; (2) that at a time and place mentioned the plaintiff committed adultery, which is set up as a defence and as a counter-claim. The plaintiff replied to the answer, denying the allegations of adultery therein, and alleged that neither she or her husband was ever a resident or citizen of the State of Pennsylvania, that she was not served with process in the action in Penn-

sylvania, did not appear therein, that the court never acquired jurisdiction of the parties, and that the judgment entered was void and of no effect as between them, for the want of jurisdiction.

136 The issues were referred to a referee to hear and determine, who reported that the defendant had committed adultery as alleged in the complaint, but that the plaintiff had not, as alleged in the answer. It was also found that when this action was begun both of the parties were residents of this State, and that the defendant in this action was not a resident of the State of Pennsylvania while his action was being prosecuted in that State, but was a resident of New York, and that the defendant in that action, the plaintiff in this, was not served with the process in Pennsylvania and did not appear in the action. Upon these facts and on evidence of the value of the defendant's estate, and the amount of his annual income, a judgment of divorce was granted to the plaintiff with alimony at the rate of three thousand dollars per year.

January 24, 1878, the litigants were married at Bloomington, Ill., at which time the plaintiff resided at that place, and the defendant at the city of Rochester, N. Y. For about two years after their marriage they resided at Rochester and then moved to Buffalo, where they lived as husband and wife until September, 1882, when the plaintiff left the residence of the defendant and returned to the home of her mother at Bloomington, Ill. From September, 1882, until November, 1894, she lived with her mother at Bloomington, except during that period she went on three occasions to Europe, at one time remaining thirteen months. In November, 1894, she and her mother went to Brooklyn, where they remained until March, 1895, when the plaintiff took up her residence at the Cambridge, in the city of New York, where she has since resided.

April 9, 1894, the defendant in this action began an action 137 in the court of common pleas of Jefferson county, Pa., against the plaintiff in this action for a divorce, alleging as a ground that he was a resident of that State and that she had deserted him. An original subpœna was issued on the 10th of April, 1894, to the sheriff, who made return that the defendant could not be found. On the 17th of May, 1894, an *alias subpœna* was issued and delivered to the sheriff, who in September, 1894, returned that the defendant could not be found. On the 14th of September, 1894, a *pluries subpœna* was issued requiring the defendant to show cause on the second Monday (10th day) of December, 1894, why a divorce should not be granted. This subpœna, pursuant to an order of the court, was published for four successive weeks in the Brooklyn *Republican* in the issues of October 17, 1894, October 20, 1894, October 31, 1894, and November 7, 1894. December 1, 1894, the *pluries subpœna* was enclosed in a postpaid envelope and addressed, "Mrs. Mary G. Bell, Bloomington, Ill.," and deposited in the post-office at Reynoldsville, Pa., which was duly received at Bloomington, Ill., and forwarded by the post-office authorities to the plaintiff at Brooklyn, N. Y., where she received it December 4, 1894. The same day on which the *pluries subpœna* was mailed to the plaintiff, the examiner appointed to take evidence in the case mailed a notice to

her at Bloomington, Ill., that he would attend to the duties of his appointment December 4, 1894, which notice she received at Brooklyn, N. Y., December 4, 1894, the day appointed to take the evidence.

In December, 1894, the evidence offered by the plaintiff in that action was taken before the examiner, who reported it to the court, and January 8, 1895, a judgment was entered by the court of common pleas of Jefferson county divorcing the litigants. This
138 judgment was entered seventeen days after the service of the summons and complaint in the case at bar.

Henry H. Seymour, for appellant.

Charles B. Wheeler, for respondent.

FOLLETT, *J.*:

The plaintiff not having been personally served with process, and never having appeared in the action prosecuted in the court of common pleas of the State of Pennsylvania, had the right to attack the judgment rendered by that court on the ground that it never acquired jurisdiction over her, and also on the ground that the plaintiff in that action was not a citizen of Pennsylvania, and it was competent to support her contention by oral and documentary evidence. The recitals in the Pennsylvania judgment were not conclusive nor binding on her. (*Thomas vs. Whitman*, 18 Wall., 457; *Kerr vs. Kerr*, 41 N. Y., 272; *Cross vs. Cross*, 108 *id.*, 628; *Rigney vs. Rigney*, 127 *id.*, 408; *Vanfleet Col. Attack*, 388, 389 *and cases cited.*) It is not asserted that the plaintiff in this action ever resided in Pennsylvania, or that she was personally served with process on that State, or that she appeared in that action, and the evidence is ample to sustain the finding of the referee that the defendant in this action was not a resident or citizen of Pennsylvania, but went there solely for the purpose of instituting and prosecuting his suit for a divorce.

These facts being well found, it is settled by a long line of authorities in the courts of this State, that the judgment of the court of common pleas of Pennsylvania is not binding on the plaintiff and is not a bar to her action for a divorce. (*Kerr vs. Kerr*, 41 N. Y., 272; *Kinnier vs. Kinnier*, 45 *id.*, 535; *Hoffman vs. Hoffman*,
139 46 *id.*, 30; *People vs. Baker*, 76 *id.*, 78; *O'Dea vs. O'Dea*, 101 *id.*, 23; *Jones vs. Jones*, 108 *id.*, 415; *Cross vs. Cross*, 108 *id.*, 628; *Rigney vs. Rigney*, 127 *id.*, 408; Rev., 160 U. S., 531; *Williams vs. Williams*, 130 *id.*, 193; *Atherton vs. Atherton*, 82 Hun., 179.)

It was shown that the defendant has an estate of the value of more than three hundred thousand dollars and is in receipt of a large annual income. During the married life of these parties the defendant owned, and they occupied, an expensive home, handsomely furnished; kept horses, carriages, a butler, a coachman and a number of servants, and the sum allowed to the plaintiff for alimony, with the income of her estate, will not enable her to live in the same style and position that she did during her married life. The defendant gave no satisfactory evidence of the amount of his estate, and we think the estimate of the referee of its value and of

defendant's income a conservative one, and that the sum allowed for alimony is not excessive.

The judgment should be affirmed with costs.

All concur.

Supreme Court, Erie County.

MARY G. BELL, Respondent,
against
FREDERICK A. BELL, Appellant.

SIR: Take notice that the said defendant hereby appeals to the court of appeals from the decision of the appellate division
140 of the supreme court, for the fourth department, made on the 18th day of April, 1896, herein, and from the order and judgment entered thereon in this action in Erie county clerk's office, on the 28th day of April, 1896, affirming the judgment entered in this action on the 3d day of July, 1896, in the clerk's office of said Erie county, and that said defendant appeals from said order, and said judgment of affirmance entered thereon, and from every part thereof.

Yours, etc., HENRY H. SEYMOUR,
Attorney for Appellant, 11 *and* 12 *Hayen Bldg., Buffalo.*

To Charles B. Wheeler, attorney for respondent, Buffalo, and to the county clerk of Erie county.

STATE OF NEW YORK, } ss:
Erie County Clerk's Office, }

I, George Bingham, clerk of said county, do hereby certify that I have compared the annexed copy of a judgment, notice of entry and notice of appeal thereon, with an original judgment, notice of entry and notice of appeal entered and on file in this office, and find the same to be true transcripts of and from the said originals, and the whole of each thereof.

In witness whereof, I have hereunto set my hand and
[L. S.] affixed the seal of said county, at Buffalo, this twenty-fourth day of June, 1896.

GEORGE BINGHAM, *Clerk.*

141 STATE OF NEW YORK, } ss:
Erie County Clerk's Office, }

I, Otto H. Wende, clerk of said county, do hereby certify that I have compared the annexed copy of the order of affirmance on appeal from judgment, and the clerk of the appellate division's certificate thereto, with a certified order and a certificate attached to the judgment-roll in said action entered and on file in this office, and find the same to be true transcripts of and from the said originals, and the whole of each thereof.

In witness whereof, I have hereunto set my hand and
[L. S.] affixed the seal of said county, at Buffalo, this 13th day of January, A. D. 1898.

OTTO H. WENDE, *Clerk.*

142 STATE OF NEW YORK, *ss:*

Court of Appeals.

Pleas in the court of appeals, held at the capitol, in the city of Albany, on the 10th day of January, in the year of our Lord one thousand eight hundred and ninety-nine, before the judges of said court.

Witness the Hon. Alton B. Parker, chief judge, presiding.

W. H. SHANKLAND, *Clerk.*

Remittitur, January 10th, 1899.

MARY G. BELL, Respondent,
against
FREDERICK A. BELL, Appellant.

Be it remembered that on the 25th day of June, in the year of our Lord one thousand eight hundred and ninety-six, Frederick A. Bell, the appellant in this action, came here into the court of appeals, by Henry H. Seymour, his attorney, and filed in the said court a notice of appeal and return thereto from the order and judgment of the appellate division of the supreme court in and for the fourth judicial department; and Mary G. Bell, the respondent in said action, afterwards appeared in said court of appeals, by Charles B. Wheeler, her attorney; which said notice of appeal and the return thereto, filed as aforesaid, are hereto annexed. Whereupon the said court of appeals, having heard this cause argued by Mr. Henry H. Seymour, of counsel for the appellant, and by Mr. Charles B. Wheeler, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the judgment of the supreme court appealed from in this action be in all things affirmed; and it was further ordered and adjudged that the respondent recover against the appellant costs of appeal to this court; and it was also further ordered that the record aforesaid and the proceedings in this court be remitted to the said supreme court, there to be proceeded upon according to law. Therefore it is considered that the said judgment be in all things affirmed with costs, as aforesaid, and stand in full force, strength, and effect.

143 And hereupon as well *as* the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid by them given in the premises are by the said court of appeals remitted into the supreme court of the State of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and

which record now remains in the said supreme court, before the justices thereof, etc.

W. H. SHANKLAND,
Clerk of the Court of Appeals of the State of New York.

Court of appeals, clerk's office.

ALBANY, *January 10th*, 1899.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the court of appeals, with the papers originally filed therein attached thereto.

W. H. SHANKLAND, *Clerk.* [L. S.]

144 At a special term of the supreme court held at the city and county hall, in the city of Buffalo, on the 13th day of January, 1899.

Present: Hon. Henry A. Childs, justice.

MARY G. BELL, Plaintiff,
ag'st
FREDERICK A. BELL, Defendant.

The defendant above named having heretofore appealed to the court of appeals of the State of New York from the judgment of the appellate division of this court made in this action, wherein and whereby said appellant division affirmed a judgment of this court made in this action and entered upon the report of Spencer Clinton, Esq., as referee, and said appeal having been argued and submitted to the court of appeals, and said court having, on the 10th day of January, 1899, rendered its decision and entered its judgment, wherein and whereby said court in all things affirmed said judgment appealed from with costs of said appeal:

Now, therefore, upon presenting and filing the remittitur herein from said court of appeals—

And on motion of Charles B. Wheeler, Esq., attorney for said plaintiff and respondent, it is ordered that the judgment of the court of appeals be, and hereby is, made the judgment of this court, and that said respondent, Mary G. Bell, recover of and from the appellant, Frederick A. Bell, her costs of said appeal, which have been taxed at the sum of one hundred and seventeen dollars and
145 eighty-five cents ($117.85), and that said plaintiff and respondent, Mary G. Bell, have execution therefor.

146 Supreme Court, Erie County.

MARY G. BELL, Plaintiff,
against
FREDERICK A. BELL, Defendant.

The defendant above named having heretofore appealed to the court of appeals of the State of New York from the judgment of the appellate division of this court made in this action, wherein and

whereby said appellate division affirmed a judgment of this court made in this action and entered upon the report of Spencer Clinton, Esq., referee, and said appeal having been argued and submitted to the court of appeals, and said court having, on the 10th day of January, 1899, rendered its decision and entered its judgment, wherein and whereby said court in all things affirmed said judgment appealed from with costs of said appeal, and the judgment of the court of appeals having been made the judgment of this court by an order entered this 13th day of January, 1899, and the costs of the plaintiff and respondent having been taxed at the sum of one hundred and seventeen dollars and eighty-five cents ($117.85):

Now, therefore, it is hereby ordered and adjudged that the plaintiff and respondent, Mary G. Bell, recover of and from the defendant and appellant, Frederick A. Bell, the sum of one hundred and seventeen dollars and eighty-five cents ($117.85) as and for her costs of said appeal, and that she have execution therefor.

Judgment signed this 13th day of January, 1899.

FRANK P. MARQUIS, *Dep. Clerk.*

STATE OF NEW YORK, }
Erie County, Clerk's Office, } ss:

I, Otto H. Wende, clerk of said county, do hereby certify that I have compared the annexed copy of record of appeal to the court of appeals, remitt-ur and judgment, and of all proceedings had and entered in the above cause and copy endorsements thereon with the originals thereof and *its* endorsements entered and on file in this office and find the same to be true transcripts of and from the said originals and the whole of each thereof; that attached thereto are the writ of errror, with allowance endorsed thereon; a copy of citation with acceptance of service endorsed thereon; a copy of the bond, and assignment of errors.

In witness whereof I have hereunto set my hand and affixed the seal of said county, at Buffalo, this 15th day of April, A. D. 1899.

[Seal Clerk's Office for the County of Erie, N. Y.]

OTTO H. WENDE, *Clerk.*

[Ten-cent U. S. internal-revenue stamp, canceled 4, 15, '99. O. H. W.]

147 UNITED STATES OF AMERICA:

Supreme Court.

MARY G. BELL, Plaintiff, *against* FREDERIC A. BELL, Defendant.	At Law.	Petition for Writ of Error.

To the Hon. Rufus W. Peckham, associate justice of the Supreme Court of the United States:

Comes now the defendant, Frederick A. Bell, and says that on the 3d day of July, 1895, a judgment of the supreme court of the State of New York was entered in the clerk's office of the county of

Erie, in the said State, against said defendant in favor of the above-named plaintiff of absolute divorce, dissolving the marriage between the said parties and decreeing that the said defendant shall pay to the said plaintiff three thousand dollars per annum during her natural life, such payments to begin from the 22nd day of December, 1894, to be paid in quarterly installments of $750.00 each, together with the sum of $435.94 costs.

And that on the 13th day of January, 1899, an order was duly entered in the clerk's office of said county of Erie, in said State of New York, upon a remittitur from the court of appeals, which is the highest court of law and equity in said State of New York, affirming, without any opinion being written by said court of appeals, the said judgment of the supreme court of the State of New York as against this defendant, by which said judgment defendant was aggrieved, in that in said judgment and the proceedings had prior thereunto in this cause several errors were committed to the prejudice of this defendant, all of which will appear more in detail from the assignment of errors filed with this petition; wherefore defendant prays that a writ of error may issue to the supreme court of the State of New York or to the proper court for the correction of the errors complained of, and that a duly authenticated transcript of the record, proceedings, and papers herein may be sent to the said Supreme Court of the United States.

148 Defendant further says that these parties were married in Bloomington, Illinois, January 24, 1878; that in September, 1882, these parties then residing in the city of Buffalo, State of New York, the said plaintiff deserted defendant and returned to her mother's home, in said Bloomington, where she resided until November, 1894; that in the year 1894 the said defendant, being then a citizen of the State of Pennsylvania, began an action for absolute divorce against the said plaintiff in the court of common pleas in and for the county of Jefferson, in the Commonwealth of Pennsylvania, on or about the 9th day of April, 1894; that the hearing in said action was had on the 19th day of December, 1894, and that on the 8th day of January, 1895, a judgment was duly entered in the office of the clerk of said court in favor of said Frederick A. Bell and against Mary G. Bell aforesaid, dissolving the marriage between the said parties; that said defendant in said action was duly served with the process in said action and had notice thereof, but was not served within the State of Pennsylvania, nor did she appear in said action.

That in the latter part of the month of November, 1894, the said Mary G. Bell left the State of Illinois, and on the 22nd day of December, 1894, began the above-entitled action by service of the summons and complaint therein on said defendant in the city of Buffalo, in the State of New York; that as a defence to said action, under article four of the Constitution of the United States of America, this defendant plead as one of his defences the said judgment of divorce in his favor against the said Mary G. Bell of the court of common pleas of the county of Jefferson, in said State of

Pennsylvania, which said judgment was by the said New York decree held invalid in the State of New York.

149 Defendant further says that he is now a resident of Madison, in the State of New Jersey, and that the said plaintiff now is, as he is informed, living at the Murray Hill hotel in the city of New York.

FREDERIC A. BELL,
By HENRY H. SEYMOUR,
His Attorney.

STATE OF NEW YORK, }
County of Erie, } ss.:

Henry H. Seymour, being duly sworn, says that he has read the foregoing petition and knows the contents thereof, and that the same is true to the knowledge of deponent except as to matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true, and further states that all of the matters stated in said petition are within the personal knowledge of deponent.

HENRY H. SEYMOUR.

Sworn to before me this 1st day of February, 1899.
WILLIS H. MEADS,
Notary Public.

150 UNITED STATES OF AMERICA:

Supreme Court.

MARY G. BELL, Defendant in Error, }
against
FREDERIC A. BELL, Plaintiff in Error. }

The said plaintiff in error, Frederic A. Bell, by Henry H. Seymour, his attorney, now comes into the Supreme Court of the United States, and for assignment of errors herein says that in the record and proceedings and in the judgment in said cause there is manifest error in this, to wit:

I. That the supreme court of the State of New York erred and violated article 4 of the Constitution of these United States in holding and determining that the judgment in favor of said plaintiff in error against said defendant in error of the court of common pleas of the county of Jefferson, in the Commonwealth of Pennsylvania, duly entered in the office of the prothonotary of said court on the 8th day of January, 1895, divorcing and separating the said Frederic A. Bell from the nuptial ties and bonds of matrimony theretofore contracted between him and the said Mary G. Bell, was invalid in the State of New York, and thereby holding and decreeing that on the 3d day of July, 1895, in the said State of New York, that said judgment was invalid, and entering judgment in the clerk's office of the supreme court of the State of New York in and for the county of Erie, on said 3d day of July, 1895, in favor of said Mary G. Bell against said Frederic A. Bell, dissolving the same

marriage tie theretofore dissolved by the said judgment of the said court in the Commonwealth of Pennsylvania; that said last-named judgment rendered in the supreme court of the said State of New York in this case and duly affirmed by the court of appeals of said State, it being the highest court of law and equity in said
151 State in which a decision could be had in said case, should be reversed for the reasons following, namely: That the said judgment of the supreme court of said State is repugnant to article four of the Constitution of the United States of America, which provides that "full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State," and contrary to the act of Congress of May 26, 1790, which provides that "the said records and proceedings authenticated, as aforesaid, shall have such faith and credit given them in every court within the United States as they have by law or usage in the courts of the State from whence the said records are or may be taken."

There is error also in this, to wit: That by the record aforesaid it appears that the judgment aforesaid was given for the said Mary G. Bell against the said Frederic A. Bell, whereas by the law of the land the said judgment ought to have been given for the said Frederic A. Bell against the said Mary G. Bell, and the said Frederic A. Bell prays that the judgment aforesaid, for the error aforesaid and other errors in the record and proceedings and the matters herein set forth in said cause, may be reversed and held for nothing, and that he may be restored to all things which he may have lost by occasion of said judgment.

HENRY H. SEYMOUR,
Attorney for Plaintiff in Error.

152 STATE OF NEW YORK, }
Erie County. }

Supreme Court.

MARY G. BELL, Resp'd't, }
against }
FREDERIC A. BELL, App'l't. }

Whereas on the 3d day of July, 1895, in the above court, the above-named respondent, Mary G. Bell, recovered a judgment against the above-named appellant, Frederic A. Bell, of absolute divorce, together with three thousand dollars per annum alimony, to be paid quarterly, from the 22nd day of December, 1894, by the said Frederic A. Bell to the said Mary G. Bell, together with $435.94, costs and disbursements; and whereas said judgment has been duly affirmed by the appellate division of said supreme court and judgment of affirmance duly entered thereon in said clerk's office; and whereas said judgment has been further affirmed by the court of appeals of the State of New York and its judgment having been duly made the judgment of the said supreme court by an order thereof entered in the clerk's office of Erie county on the 13th day of January, 1899;

And whereas the above-named Frederic A. Bell, feeling aggrieved thereby, intends to appeal therefrom to the Supreme Court of the United States: Now, therefore, I, Katherine B. Lewis, residing at number 656 Seventh street, in the city of Buffalo, county and State aforesaid, do hereby, pursuant to the statute, *do* undertake that the said appel-ant shall pay all costs and damages which may be awarded against him on said appeal not exceeding thirty thousand dollars, and that said appellant shall pay the said judgment if the said judgment shall be affirmed on said appeal—that is to
153 say, the said sum of three thousand dollars per annum, payable quarterly in each year from the said 22nd day of December, 1894, with interest thereon, together with all of the said taxable costs on said judgment, both in the State of New York and on the aforesaid appeal, and also in like manner undertake that if the judgment appealed from or any part thereof is affirmed or the appeal is dismissed the appellant will pay the sum recovered or directed to be paid by the judgment or the part thereof as to which it is affirmed, with the costs, as aforesaid.

KATHERINE B. LEWIS.

Dated Buffalo, January 23d, 1899.

STATE OF NEW YORK, } ss:
County of Erie, }

On this 23d day of January, 1899, before me, the subscriber, personally appeared Katherine B. Lewis, to me known to be the same person described in and who executed the within instrument and who acknowledged that she executed the same.

CHARLES B. SEARS,
Notary Public in & for Erie Co., N. Y.

STATE OF NEW YORK, } ss:
County of Erie, }

Katherine B. Lewis, being duly sworn, says that she is a resident of and a freeholder within this State, and that she is worth the sum of $30,000.00 over and above all the debts and liabilities which she owes or has incurred and exclusive of property exempt by law from levy and sale under an execution.

KATHERINE B. LEWIS.

Subscribed and sworn to before me this 23d day of January, 1899.

CHARLES B. SEARS,
Notary Public in & for Erie Co., N. Y.

Approved:
R. W. PECKHAM,
Associate Justice Supreme Court U. S.

Feb'y 3, 1899.

154 I hereby accept the within undertaking, both as to the form and as to the sufficiency of the surety executing same.

CHAS. B. WHEELER,
Att'y & Counsel for Mary G. Bell, Def't in Error.

Buffalo, January 25th, 1899.

12—265

155 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of New York, Greeting:

[Seal of the Supreme Court of the United States.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court on a remittitur from the court of appeals of the State of New York, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit, between Mary G. Bell, plaintiff, and Frederick A. Bell, defendant, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the con-
156 struction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 3d day of February, in the year of our Lord one thousand eight hundred and ninety-nine.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

Feb'y 3, 1899.

157 UNITED STATES OF AMERICA, *ss*:

To Mary G. Bell, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of New York, wherein Frederick A. Bell is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Rufus W. Peckham, associate justice of the Supreme Court of the United States, this 3d day of February, in the year of our Lord one thousand eight hundred and ninety-nine.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

158 BUFFALO, *Feb.* 14, 1899.

I hereby admit due service of the within citation upon me this 14th day of February, 1899.

MARY G. BELL,
Def't in Error,
By CHAS. B. WHEELER,
Her Attorney and Counsel.

[Endorsed:] Clerk's office, Erie county, N. Y. Filed Feb. 20, 1899. 15-315.

159 STATE OF NEW YORK:

Supreme Court, Erie County.

MARY G. BELL
against
FREDERICK A. BELL.

It is hereby stipulated and agreed by and between the respective parties herein that the annexed and foregoing is a true and correct copy of the record and all proceedings had and entered in the above-entitled cause by said court, including the written decision and reasons therefor, signed by the judges of said court and filed in the office of the clerk of the county of Erie, as appears of record and on file in said cause, and that the same is a true transcript therefrom and of the whole thereof; that attached thereto are the writ of error, with allowance endorsed thereon, the citation, with acceptance of service endorsed thereon, a copy of the bond to the

adverse party filed with the writ of error, and the assignment of errors in the Supreme Court of these United States.

Dated Buffalo, Feb'y 21, 1899.

CHAS. B. WHEELER,
Attorney for Respondent.
HENRY H. SEYMOUR,
Attorney for Appellant.

160 Supreme Court, Erie County.

MARY G. BELL
against
FREDERICK A. BELL.

It is hereby stipulated on the part of the plaintiff and defendant in error that the above-named defendant and plaintiff in error shall have thirty days' additional time from and after March 3d, 1899, in which to file and docket the above-entitled cause in the Supreme Court of the United States.

Dated Buffalo, Feb. 20, 1899.

CHAS. B. WHEELER,
Attorney for Plaintiff and Defendant in Error.

The above time for the said plaintiff in error to file or docket the above case is hereby further extended until April 22nd, 1899.

CHAS. B. WHEELER,
Attorney for Pl'ff & Defendant in Error.

Dated March 31, '99.

Endorsed on cover: File No., 17,372. New York supreme court. Term No., 265. Frederick A. Bell, plaintiff in error, *vs.* Mary G. Bell. Filed April 17th, 1899.

Supreme Court of the United States.

FREDERICK A. BELL,
Plaintiff in Error,

VERSUS

MARY G. BELL,
Defendant in Error.

Statement.

This is a writ of error to the Supreme Court of the State of New York. It runs to a judgment dissolving the marriage of these parties entered in that court, in the County of Erie, under a remittitur from the Court of Appeals. For brevity I will call the plaintiff in error Mr. Bell and the defendant in error Mrs. Bell. They were married in Bloomington, Illinois, January 24th, 1878, and lived a year or two in Rochester, New York, and then came to Buffalo, New York, where they resided until September, 1882, when Mrs. Bell left her husband's home, without just cause, and returned to her mother's house in Bloomington. Mr. Bell kept his home open in Buffalo fifteen months after her desertion, but she never returned to it.

Nearly twelve years after this, Mr. Bell, on April 9th, 1894, began an action in the Court of Common Pleas, Jefferson County, State of Pennsylvania, for an absolute divorce. Mr. Bell had formerly lived over seventeen years in this county, his coal mines were situated there, and he was a large employer of labor there; for a great many continuous years up to the date of his action fully one half of his time had he passed there. During all these twelve years Mrs. Bell had lived with her mother, in Illinois, excepting when she was in Europe (R. 14). She was not served with process in Mr. Bell's action within the State of Pennsylvania and she never appeared therein. The service was constructive, and when the service was completed she was still residing in Bloomington. She had

complete knowledge of the pendency of the action (R. 61) and referee's opinion (R. 19).

The Pennsylvania decree shows (R. 75 and 78) that the examiner set the first hearing for December 4th, 1894, in his office in Brookville, the county seat of Jefferson County. His report states (R. 78) that more than twenty days before said hearing he mailed a copy of said notice of hearing for December 4th, 1894, to Mrs. Bell at Bloomington, Illinois. It is as follows:

> "To Mary G. Bell:
>
> You are hereby notified that I will attend to the duties of my appointment in the above-stated case, at my office, on Main Street in the Borough of Brookville, in the County of Jefferson and State of Pennsylvania, on the fourth day of December, A. D., 1894, at 9.00 o'clock A. M., at which time and place you may attend if you see proper and wish to do so.
>
> November 3d, 1894. JOHN CONRAD, Examiner."

This notice is dated November 3d, 1894, so that by November 6th, or thereabouts, Mrs. Bell was aware of the date of hearing in the action, the pending of which she had been before informed by the construction service of process. This date is important as bearing on her flight into the State of New York to avoid the legal effect on her, as a resident of or as domiciled in Illinois, of the Pennsylvania decree, and also to begin her action against Mr. Bell, in New York, for divorce. This hearing set for December 4th, 1894, was adjourned, without taking any testimony, to December 13th, and again to December 19th, at which time the testimony was all put in. Mrs. Bell did not appear. I had taken particular pains to have knowledge of the action and hearing brought to her and was anxious she should appear. Mr. Bell and I were present at this hearing. Everything on his part was open and above board. Mr. Jenks, Solicitor-General under President Cleveland, was our counsel. The examiner's report is dated December 19th, 1894, but as no court was in session in that county until January, the judgment could not be entered until January 8th, 1895, which was in favor of Mr. Bell and dissolved his marriage with Mrs. Bell on the ground of desertion (R. 81). This is a ground for divorce, *a vinculo*, under the laws of the State of Pennsylvania and also of Illinois (R. 84).

In the meantime, Mrs. Bell, about November 14th, 1894, left the State of Illinois (R. 27) and came to the State of New York "with the avowed purpose of bringing this suit for divorce" (Referee's Opinion, R. 19). She was near Buffalo a few days prior to November 21st, and left for Brooklyn on that date (R. 29). She verified her complaint in Kings County December 10th, 1894, in which she sued Mr. Bell for an absolute divorce (R. 2). It was personally served upon Mr. Bell December 22d, 1894, five days after the hearing in Pennsylvania. As a defense to Mrs. Bell's New York action, Mr. Bell pleaded his Pennsylvania judgment which had dissolved by a valid judgment of divorce *a vinculo*, his marriage with Mrs. Bell. This judgment being pleaded in New York was held to be void.

The federal question is whether the courts of New York have given to the judgment of the Pennsylvania court the faith and credit to which, under Article IV. of the Constitution, and the laws of the United States of America, it is entitled.

The following is the judgment of Pennsylvania:

"IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY.

FREDERIC A. BELL,
VERSUS
MARY G. BELL.

Of May Term, 18—. No. 225. Divorce.

"And now, January 8th, 1895, the Court having heard this case, and having fully considered and proceeded to determine the same as to law and justice appertain,

"Do sentence and decree, that the said Frederc A. Bell be divorced and separated from the nuptial ties and bonds of matrimony heretofore contracted between him, the said Frederic A. Bell, the libellant, and the said Mary G. Bell, respondent, and that thereupon all and every the duties, rights and claims accruing to either the said Frederic A. Bell, or the said Mary G. Bell, at any time heretofore in pursuance of said marriage, shall cease and determine.

"And further, the Court do award to the said Frederic A. Bell, against the said Mary G. Bell, his costs in this behalf expended.

By the Court,

[L. S.]

E. HEATH CLARK,
President Judge.

Attest:

W. D. CLARK,
Prothonotary."

That part of Mr. Bell's answer in New York which pleaded the Pennsylvania judgment, is as follows:

"SUPREME COURT, ERIE COUNTY.

MARY G. BELL,
AGAINST
FREDERICK A. BELL.

"The said defendant, by Henry H. Seymour, his attorney, answering the complaint herein, alleges, by his amended answer:

"Admitting the marriage in said complaint alleged, denies each and every other allegation contained therein. And for further defense the said defendant alleges that at the times hereinafter mentioned the Court of Common Pleas of Jefferson County, of the State of Pennsylvania, was a court of general jurisdiction duly created by the laws of that State. That on or about the 9th day of April, 1894, the defendant commenced an action in said court against said plaintiff for the dissolution of his said marriage with said plaintiff *a vinculo matrimoni*, by the issue of summons, which summons and notice or the process, by, virtue of which by the laws of the State of Pennsylvania jurisdiction is obtained over the defendant in actions at law in said State, was duly served upon the plaintiff herein, and the said Court of Common Pleas of Jefferson County had jurisdiction over the said plaintiff herein, as the defendant in that said action, or the pendency of which said action the plaintiff herein had personal and timely notice. That the hearing upon said action, or the trial thereof, was held in Brookville, in said County of Jefferson, in said State of Pennsylvania, on the 19th day of December, 1894, and such proceedings in said action were thereupon had; that said court heretofore, on the 8th day of January, 1895, duly adjudged and decreed that the marriage of the parties hereto in this complaint alleged be dissolved, and said defendant recovered judgment in said court against the plaintiff herein, the said defendant herein, dissolving said marriage, and by a judgment and decree of the said Court of Common Pleas of the County of Jefferson, and State of Pennsylvania, the marriage alleged in the complaint herein, between the parties hereto, was heretofore dissolved."

Mrs. Bell served a reply to this answer denying any knowledge, etc., as to the jurisdiction or creation of the Pennsylvania court, or of the proceedings therein, or that any process had

ever been served on her, and also that Mr. Bell was never a resident or citizen of Pennsylvania, and that said judgment was a fraud upon Mrs. Bell and the laws of said states (R. 8). On the trial, however, there was no proof whatever of any such *fraud* nor any findings of fraud made by the referee.

The federal question was raised by me in all the courts of New York. The referee reported in favor of Mrs. Bell, saying in reference to the Pennsylvania judgment: "The plaintiff (Mrs. Bell) *had notice of the action*, but did not appear in it or take any part in it. In that action a decree was rendered dissolving the marriage between the parties for the desertion of the defendant by the plaintiff. That decree was offered in evidence before me. It can have no force in changing the relations of the parties. The uniform course of decisions by the courts of our state forbid my giving any force to this decree" (R. 19).

Judgment on this report was entered in the County of Erie July 3d, 1895, in favor of Mrs. Bell, dissolving the said marriage.

This judgment was affirmed on appeal to the Appellate Division of the Supreme Court, with an opinion (R. 138). That judgment was affirmed by the Court of Appeals, without opinion, but not on the opinion of the Appellate Division, and its judgment was made the judgment of the Supreme Court January 13th, 1899 (R. 144).

Errors Assigned.

1. That the said judgment fails to give that faith and credit to the decree of the Pennsylvania court, to which, under the Constitution and laws of the United States, it is entitled.

2. That "full faith and credit" being given to the said Pennsylvania judgment under said constitution and laws, Mr. Bell was, at the time he served his answer in said action by Mrs. Bell against him in New York, not the husband of said Mary G. Bell, and she had no cause of action against him.

3. That the judgment against Mr. Bell, your petitioner of the New York court, is erroneous and violative of his rights under the Constitution and laws of the United States.

4. That said judgment is against the right of Mr. Bell.

ARGUMENT.

The Pennsylvania Judgment on its Merits.

This judgment was based on Mrs. Bell's desertion of Mr. Bell. The examiner's or referee's report therein is as follows:

"*To the Honorable, the Judges of the Court of Common Pleas of Jefferson County:*

"The undersigned Examiner, appointed by the Court, as per commission hereto attached, respectfully reports: That he was affirmed according to law; that he published due notice of the time and place of the hearing in this case, in the Jefferson *Democrat* and the Brookville *Republican*, published in Brookville, Jefferson County, in the State of Pennsylvania, and also posted a copy of said notice in a conspicuous place in the Prothonotary's office for more than twenty days, also mailed a copy of said notice more than twenty days before the hearing to Mary G. Bell, at Bloomington, McLean County, Illinois; a copy of said notice is hereto attached. In pursuance of said notice, the Examiner attended at his office, in the Borough of Brookville, in the county aforesaid, on the 4th day of December, A. D., 1894, at 9.00 o'clock, A. M., the time and place fixed for the hearing. C. Z. Gordon, Esq., appeared for the libellant, and on his application, on the ground of sickness of the libellant, the case was continued December 13, 1894, at 9.00 o'clock, A. M. At which time C. Z. Gordon, Esq., appeared for the libellant, and on account of the continued sickness of the libellant, the hearing was adjourned to December 19, 1894, at 9.00 A. M. At which time the libellant appeared with his attorneys, C. Z. Gordon, Esq., and Hon. George A. Jenks. The respondent did not appear; the testimony offered on the part of the libellant and taken by the Examiner at said hearing is hereto attached. From the testimony the Examiner finds the following facts:

"Frederic A. Bell, the libellant, and Mary Gridley, now Mary G. Bell, the respondent or defendant, were on the 24th day of January, A. D. 1878, at Bloomington, in the State of Illinois, married. Immediately after their marriage they lived together as husband and wife, in Rochester, New York. Subsequently they lived in a fine residence on Delaware Avenue, in Buffalo, New York. She was of an erratic, morose and jealous disposition. They have had no children. Her moods led to troubles in the family, induced by herself. The libellant was of an even, kind and considerate disposition; she made home unpleasant,

made it embarrassing to strangers visiting, and very embarrassing and unpleasant to the parents of the libellant to visit at their home. The libellant endeavored to make home happy and comfortable for her; he had a coachman hired to take her out driving from four to six times a week, but she would take sullen moods, when she would not speak to him, and she acted very ugly and cruelly to him sometimes. The respondent, Mary G. Bell, left her husband's home in Buffalo the first or second week in August, 1882, and went to Bloomington, Ills., and she returned about the first of September, 1882, accompanied by her mother, Mrs. Gridley. She stayed about a week, and she then left home, the house and habitation of her husband, accompanied by her mother, and told Mrs. Maggie Cashian, an employe in the house, that she was going away from there for good, and wanted Mrs. Maggie Cashian to leave at the same time, giving as the reason that it would look better if they both left at the same time. She said she was going to stay with her mother, in Bloomington, Illinois, and she was very much excited. Frederic A. Bell, the libellant, was away on business when she left. She never returned to Frederic A. Bell's society or home after she left at that time; she lived in Bloomington, Illinois, since she deserted the libellant; she left him and wilfully and maliciously deserted him without reasonable cause. Frederic A. Bell left Buffalo, New York, in March, 1893, and in March, 1893, he became resident of the Borough of Reynoldsville, in the County of Jefferson and State of Pennsylvania, and has been a resident there since, and also has since that time been a citizen of the State of Pennsylvania.

LEGAL CONCLUSION.

"The Examiner's opinion that the desertion of Mary G. Bell, the respondent, from Frederic A. Bell, the libellant, is, and has been of such a nature and character as to entitle the libellant to be divorced and forever separated from the nuptial ties or bonds of matrimony with Mary G. Bell, the respondent. The desertion having been without just cause and continued for over twelve years, there appears no good reason why a divorce should not be decreed. The Examiner, therefore, respectfully recommends the decree of divorce hereto attached, and he hereby certifies that he is not concerned as counsel for, nor related to, either of the parties in this proceedings, nor interested in the event thereof. All of which is respectfully submitted.

December 24, A. D. 1894. JOHN CONRAD,
Examiner."

Mrs. Bell's own witnesses, sworn in her behalf in her New York action, testified as follows on cross-examination, showing, without one word of evidence to explain or contradict it, that Mrs. Bell did desert Mr. Bell in Buffalo in 1882, without any cause whatever, even as she deserted Mr. Bruce in 1874 in Illinois, her first husband (R. 56).

Wherever desertion is a ground for divorce, Mr. Bell would have obtained judgment on such testimony.

I quote from the cross-examination of Maria Toomey, a maid in the Bell household and sworn for Mrs. Bell (R. 33), describing her departure in September, 1882, the time she left defendant for good:

> "Mrs. Bell bade us good-bye, she shook hands with us and said good-bye.
>
> "Q. Did she say she was coming back? A. She never said she was coming back.
>
> "Q. Did she say she was coming back? A. I don't remember she made use of them words. We knew she was going away.
>
> "Q. For good? A. Yes, sir.
>
> "Q. Why? A. I saw all her things packed up and of course I knew by her actions she was going away.
>
> "Q. Do you recall whether she said anything to you about going away for good? A. I guess she did. We all knew it anyway, that she was going away for good.
>
> "Q. Did you know it from her actions and conduct? A. Why certainly. I do believe Mrs. Bell told us she was going away and we could see it ourselves.
>
> "Q. See if you can remember whether she did tell you that she was going away for good? A. That is my recollection; that I knew distinctly that she was going away for good.
>
> "That she told you? A. Yes, sir."

The above is the testimony of the plaintiff's own witness. Further than that it is nowhere denied or explained in any way. No reason is given by the plaintiff why she left her husband's house. No fault of his is alleged or shown. On the contrary the testimony of Maggie Cashion at (R. 97) is:

> "I have never seen Mr. Bell in company, but as to his manner usually towards Mrs. Bell, I always seen Mr. Bell just the same as he always was, always quite pleasant."

This last witness, the cook in Mrs. Bell's house, testified (R. 94):

> "Mrs. Bell bade me good-bye when she left the second time. I don't know what she said. She said good-bye to me. She didn't say anything about when she would came back. She intended to stay home, I think.
>
> "Q. Did she say anything about leaving Mr. Bell then? A. She did.
>
> "Q. What was that? A. That she was going for good, she told me—I had a letter from a lady that I lived with in Montreal * * * and she told me I had better go to that lady. She said it would look better on her part if I were to leave Mr. Bell at that time. She did not say it would look better upon my part. I said I would stay with Mr. Bell, and I stayed with him a year and three months after that. All that time Mr. Bell kept open house. I never saw Mrs. Bell there again."

The date of Mrs. Bell's departure, above portrayed, was September, 1882. She thus sought to break up his home, by inducing the servant to leave him, giving as a pretext it would look better for Mr. Bell, because both leaving him at the same time it would appear as if the fault were his, when the fact was otherwise.

Directly before her departure forever, in September, 1882, Mrs. Bell went to Bloomington and visited her mother two weeks. Her own witness, Maria Toomey (R. 32–33) testified:

> "I remember Mrs. Bell's going to Bloomington. When she went she left a note for Mr. Bell. * * * She left a note for Mr. Bell, for to give it to him, to tell him she was going. I gave it to Mr. Bell; he was away when she left. When she left she said to me she was going to her mother's, and when Mr. Bell came back to give him this note. While she was in Bloomington, he packed up Mrs. Bell's things and sent them out to the barn, and some men came and packed up her piano."

Mrs. Bell left her husband's home with deliberation, and never returned, though he kept open house fifteen months thereafter. There is not one item of testimony showing that Mr. Bell's conduct was such as to justify her leaving his home; on the contrary, such glimpses as we get of their life in the testimony of Maggie Cashion, shows that she made life very unpleasant for her husband, and I quote parts thereof.

When Mrs. Bell was on the stand she did not deny or explain any of this testimony (R. 95, 96).

"Do you remember times when Mrs. Bell and Mr. Bell were living together, when she did not speak to him for days? A. As far as I could see I thought they were not speaking at times, but I don't know the reason; I remember times when Mrs. Bell wouldn't speak to Mr. Bell for days.

"Q. At such times, what was the expression on Mrs. Bell's face? A. Sometimes she looked pleasant, and sometimes she looked sad and troubled like.

"Q. Haven't you used other expressions in regard to that? A. She was excited; sometimes she looked pleasant, and sometimes troubled and excited-looking.

"Q. I am speaking of those times when they were not speaking to each other. She didn't look pleasant then, did she? A. No.

"Q. And in what was she excited? A. She would come into the kitchen and want to know where Mr. Bell was when he passed down-stairs; sometimes follow him into the cellar when he would go down cellar for his cigars, and sometimes into the barn, and then she would go into the front part of the house; she looked disagreeable and excited-looking. To the best of my recollection the longest time I have known any of them to last was a week, or three or four days. At these times she always seemed to have a suspicion of Mr. Bell, jealous like, as far as I could understand. I have never seen Mr. Bell in company, but as to his manner usually towards Mrs. Bell, I always seen Mr. Bell just the same as he always was, always quite pleasant. I have been present when Mrs. Bell acted unpleasantly to Mr. Bell; he offered her wine at the table, and she would not take any, and she acted ugly; I don't know as it was unpleasant; I don't know; I have seen her slam doors around the house when she left the room where he was."

The Illinois statute on divorce is as follows:

"Chapter 40, Section 1—Causes. Be it enacted by the People of the State of Illinois, represented in General Assembly. That in every case in which a marriage has been or hereafter may be contracted and solemnized between any two persons, and it shall be adjudged in the manner hereinafter provided, that either party at the time of such marriage was and continues to be naturally impotent; or that he or she had a wife or husband living at the time of such marriage; or that either party had com-

mitted adultery subsequent to the marriage, or has wilfully deserted or absented himself or herself from the husband or wife without any reasonable cause, for the space of two years, or has been guilty of habitual drunkenness for the space of two years, or has attempted the life of the other by poisoning or other means, showing malice; or has been guilty of extreme and repeated cruelty; or has been convicted of felony, or other infamous crime, it shall be lawful for the injured party to obtain a divorce and dissolution of such marriage contract."

The New York Decisions.

The New York Court of Appeals has so decided the various questions arising out of marriage and divorce, that the case law to-day has reached a wholly illogical condition uncontemplated by the decision in the Baker case in 1879. (People v. Baker, 76 N. Y. 78.) By this decision a man can have any number of wives, all living, all legal wives in the States wherein they were married, and he cannot be punished for bigamy in New York where he may reside with wife No. 2, in the next house to wife No. 1, etc., etc.

In the Baker case Judge Folger, as if troubled with his own logic, referred the final decision of this question to this court in this language:

> "We are aware that there are decisions of the courts of sister States to the contrary of the authorities in this State. They are ably expressed; they are honestly conceived. They are, however, on one side of a judicial controversy, the dividing line thereof is well marked, and is not lately drawn. It would not be profitable to review and discuss them. They are prevalent within the jurisdictions in which they have been uttered, and we cannot expect to change them there. They are in opposition to the judgments of our own courts, which we must respect, and with which our reason accords. It remains for the Supreme Court of the United States, as the final arbiter, to determine how far a judgment rendered in such a case, upon such substituted service of process, shall be operative, without the territorial jurisdiction of the tribunal giving it."

Since then all the New York cases have followed the Baker case. I showed in my Court of Appeals brief that not one of the cases, cited by Folger, J., in the Baker case, sustained his philosophy, the facts being so entirely different. His main

authority was Borden v. Fitch, 15 J. R. 121, date 1818. A Vermont divorce was pleaded by defendant based on constructive service, regular according to Vermont laws, but it appeared on the trial that the allegations of the bill were false because it said nothing about a decree of divorce by the Connecticut legislature against the plaintiff obtained by his wife, and under which she was living, but alleged she had deserted him, and the court held the divorce pleaded as a defense was obtained by fraud. In his opinion in this Borden case, Thompson, C. J., cited as his first and chief case Buchanan v. Rucker, 9 East 192, wherein the Court of Kings Bench declared that the law would not raise an *assumpsit* upon a judgment obtained in the Island of Tobago by default (and afterwards sued in London), when it appeared on the face of the proceedings that the defendant was not in the island when the suit was commenced, and that he had been summoned by nailing a copy of the declaration on the court house door.

Since then this Buchanan case has been decidedly distinguished in England in Schilsby v. Westerholz, 5 English Ruling Cases, 734.

This was an action in London on a French judgment obtained by default. The plea by the defendant was, never resident or domiciled in France, no appearance, never summoned, nor any notice or knowledge of pending of action. The plaintiff was a Dane, resident in France. The defendants were Danes, resident in London. A contract was made in London by which defendants were to ship in Sweden a cargo of Swedish oats to Caen, France. Plaintiff claimed the oats were short in quantity and defective in quality, and sued in the French courts. The method of serving the process is as follows: The summons is served on the Procureur Imperial. If the foreign defendant, so cited, does not appear within one month judgment may be given against him, but he may at any time within two months after judgment appear and be heard on the merits. After that lapse of time judgment is final. The practice of the imperial government in such a case is to forward the summons thus served to the consulate or the country where defendant is resident, with directions to intimate the summons, if practicable, to defendant, though this is not required.

The judgment obtained as above was regular, yet can it be

said, with such a service of process, that the decision of the English courts not to be bound by it should be applied to throw out the judgment of a sister State here?

Lord Blackburn, in delivering judgment in this case, referring to Buchanan v. Rucker and Lord Ellenborough's famous question, "Can the Island of Tobago pass a law to bind the rights of the whole world?" said, that Lord Ellenborough rested his judgment, not on that exclamation, but on the ground that laws passed by our country were not obligatory on foreigners not subject to their jurisdiction.

Lord Blackburn then proceeds to say:

> "The question we have now to answer is, can the Empire of France pass a law to bind the whole world? We admit, with perfect candor, that in the supposed case of a judgment obtained in this country against a foreigner under the Common Law Procedure Act, being sued on in a court of the United States, the question for the court of the United States would be, 'Can the Island of Great Britain pass a law to bind the whole world?' We think in each case the answer should be No, but every country can pass laws to bind a great many persons, and therefore the further question has to be determined, whether the defendant in the particular suit was such a person as to be bound by the judgment which it is sought to enforce?"

So in this Bell case, to be concrete, I think "the defendant in this particular suit," with an ~~Indiana~~ marriage to start with, with her ten years residence in ~~Indiana~~ after she left her husband in New York, with her leaving ~~Indiana~~ on November 14, 1894, directly upon receiving notice of the pendency of the Pennsylvania action against her, and her commencement of this action within a month, the summons being dated December 10, 1894, with her full knowledge of the pendency of the Pennsylvania action, which was not tried until December 19, 1894, is a defendant that should be bound by the decree pleaded in defense to her action. The Pennsylvania decree was granted for a cause which is also cause in Illinois.

I will briefly pursue the history of this apparently unconscious evolution by New York of its philosophy in the Baker case. In that case the court stood 6 to 1 against the foreign judgment. This was in 1879. In 1885, the O'Dea case, the New York court stood 4 to 3 against the foreign judgment,

showing in the advance of time a parallel advance towards right. When the Baker case was decided in January, 1879, there was no provision in the New York Code for serving a non-resident by substituted service, by publication, or mailing a marked copy to the defendant, of the summons. It only provided at that time that you could serve residents *of the State of New York* in that way, who for the time being were outside of the State, but immediately after this decision, and within three months, as if the Legislature had had this point in mind, amended the law for service of a summons in that respect, and from that time on provided for the service of a summons in a divorce case on a non-resident outside of the jurisdiction of the State, exactly the same as the State of Pennsylvania served Mrs. Bell in Mr. Bell's action. So that the law to-day stands changed in that respect from what the law was at the time of the Baker case. Judge Folger, in his opinion, pointed out that we did not provide for the service of a summons in a divorce case upon a non-resident outside of the State of New York, and he also said:

> "As we look at this case it presents this question: Can a Court in another State adjudge to be dissolved and at an end the matrimonial relation of a citizen of this State, domiciled and actually abiding here throughout the pendency of the judicial proceedings there, without a voluntary appearance by him therein, *and with no actual notice to him thereof*, and without personal service of process on him in that State," and the opinion goes on all through upon those fundamental principles with special mention of the middle proposition, "without actual notice to him thereof."

The New York Code provides further, we not only give a plaintiff a judgment for an absolute divorce, against a non-resident when the summons is served, by publication, outside of the State, but makes that judgment an exception from all other judgments which are obtained upon substituted service in not allowing a judgment for divorce to be opened within the statutory year, while allowing other judgments obtained upon substituted service to be opened that way.

The Court in the O'Dea case, upon the argument being made that that case should succeed because the defendant therein had had actual notice of the proceedings, and the case was

therefore organically distinguished from the Baker case, says in its opinion, "Per Curiam":

> "We think the case of People v. Baker is conclusive on the question brought up by this appeal. There are some differences in the detail of the circumstances of the two cases, but we think not enough to lead to any change in the result, nor sufficient to require a reconsideration of the law affecting it. This conflict of opinion" (referring to the judgments of the other States), "however much to be regretted, continues, and it yet remains for some ultimate authority to relieve the point from the difficulties now attending it, and determine the civil rights of parties whose relations are legally defined by different State tribunals."

Judge Danforth said, in his dissenting opinion in this case:

> "Where the jurisdiction of the Court rests only on the fact that the moving party had his domicile within such jurisdiction, its claim to recognition in other States rests upon the ground of comity, and this cannot prevail without giving the party affected an opportunity to be heard." And, "It is true that notice so served on a litigant, out of the jurisdiction in which a suit is pending, may add nothing to the judicial right to take cognizance over the cause, but, nevertheless, it may impart a quality to the resulting judgment that will serve as a credential to it in a foreign jurisdiction."

And in discussing service outside the State he says:

> "Indeed, as the object of all service is to give notice to the party on whom it is made, that he may be aware of, and may resist, the relief sought against him; when that is substantially done, so that the Court may feel confident that service has reached him, it would seem that everything has been done that is required.
>
> "This is said in Gibbs v. Ins. Co., 63 N. Y. 114, and is repeated in Pope's case, 87 N. Y. 137, 140, with the addition, that any service which reasonably accomplishes that end answers the requirement of natural justice and fundamental law. Indeed it is difficult to see how it could be otherwise. We hold it enough within the strictest rule to serve process upon a defendant, although he is in transit —passing through the State, neither abiding here, nor having any intention to remain. Of what less real and substantial efficacy for all beneficial purposes in the actual delivery of the paper outside the limits of the State? So, as against a domiciled citizen of a State, a judgment ren-

dered upon such substituted service is by the law of the State permitted, although he is in fact absent. And it is valid and binding upon him, though he is actually abiding in another State, and has neither appeared in the suit, nor had actual notice of it. His absence, whether temporary or prolonged, makes no difference.

* * * "It follows, I think, that the true and safe rule is as stated by Cooley (Const. Lim. 400)"—he is now discussing the residence of the wife—"that the actual *bona fide* residence of either husband or wife within a State will give to that State authority to determine the status of such party, and to pass upon any questions affecting his or her continuance in the marriage relation, and that the Courts of that State, authorized by its legislature to take cognizance of the subject, may lawfully pass upon such questions and annul the marriage for any cause allowed by the local law, that jurisdiction over the opposite party may be acquired in such manner as the legislature may direct, and whether by service in, or notice out of the State, or by publication, is sufficient to justify a decree changing the status of the complaining party, and thereby terminating the marriage. By holding otherwise we declare our own statutes (Code Civ. Pro. Sec. 438, Sub. 4, Sec. 1774), upon the same subject unavailing, and compliance with them a useless and idle formality." * * *

"And even if within that opinion the Courts of Ohio could not declare the status of the defendant in this State, it could and it did lift the yoke from off the neck of its citizen, relieved him from the *vinculum matrimonii*, and hence, although the parties to the former marriage still lived, one of them was confessedly relieved from all his marital obligations and legally disabled from enforcing those of the others. She had no husband, at least in the State where he lived. The contract was no longer binding upon him. It follows that the former marriage cannot be said to have been in force at the time of the marriage which is the subject of this action. When the statute speaks of a 'marriage then' (at the time of the second marriage) 'in force,' it must mean a marriage by which both parties are bound and as to which the relation of neither party has been changed." * * * "As I understand the Baker case, it concedes that this rule does not inexorably require either service of process or voluntary appearance, but may be satisfied when the party has in any way been given an opportunity of being heard before judgment, or, in the language of the third condition of the question stated (*supra*) in the Baker case, has had 'actual notice' of the judicial proceedings."

This Court will thus see how the Baker case has been followed to a degree not intended by its own parents, and how also in both cases the Court of Appeals seem to refer the question to the Federal Supreme Court to help it out of a vexed question.

As a vigorous challenge to the law of the Baker case by one of New York's judges, I quote the following opinion in Davis v. Davis (1893), 2 Misc. R. 549, a more recent Philippic, wherein Pryor, J., said:

> "As the marriage purporting to be dissolved was not celebrated in Massachusetts, as the defendant in the divorce suit was not domiciled in that Commonwealth, nor was served with process there, nor appeared in the action, it results that, by the law of New York, the judgment against her is of no effect; that she is still the wife of the defendant; and that, by necessary consequence, his marriage with this plaintiff is a nullity. * * * To this conclusion I am compelled, but I am not forbidden to say that my reason revolts against it. By the law of Massachusetts its court had jurisdiction of the defendant in the divorce suit, and the decree of the divorce is valid and conclusive. By virtue of the supreme law of the nation, 'a decree in divorce, valid and effectual by the laws of the State where obtained, is valid and effectual in all other States' (Cheever v. Wilson, 9 Wall, 109), and yet I am to declare this Massachusetts judgment a nullity. And why? Because the jurisdiction of the Massachusetts court rests solely on a constructive service of process by publication; and by the law of New York such service is of no avail. But such constructive service of process is the only foundation of the jurisdiction of this court in the present case; yet, by the law of New York such service gives jurisdiction to its court, and the judgment I am to render is not only valid, but of so transcendant an efficacy as to impeach the records and cancel the judicial proceedings of another State. In reason, such service of process should be sufficient in both States, or in neither.
>
> "Equally anomalous will be the effect of the judgment of this court on the relation and rights of the parties. In Massachusetts, not the former spouse, but this plaintiff, is the lawful wife of the defendant; while in New York the former spouse is still the wife of the defendant, and his connection with the plaintiff a crime. Indeed, relying on the nullity of the Massachusetts decree, the former wife has instituted here an action for divorce from the de-

fendant, on the allegation that his marriage with this plaintiff is an adulterous association. The executive of New York may demand from Massachusetts the rendition of the defendant as a bigamist; but can he be a bigamist whom Massachusetts has released from the former marriage? The absurd and mischievous consequences of the present judgment do not relieve me from the necessity of pronouncing it; but perhaps the exposition of them may not be amiss in the prevalent agitation for a uniform system of marriage and divorce. Judgment for plaintiff."

"The Faith and Credit" Section of the Constitution and Judgments In Rem and In Personam.

Article 4, Sec. 1 of the Constitution is:

"Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State; and Congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof."

Congress thereafter passed the Act of May 26, 1790, which, after prescribing a mode in which the records and judicial proceedings of the courts of any State shall be authenticated, enacts:

"The said records and proceedings, authenticated as aforesaid, shall have such faith and credit given them, in in every court within the United States, as they have by law or usage in the courts of the State from whence the said records are or may be taken."

In Huntington v. Attril Mr. Justice Gray said:

"This clause of the Constitution, like the less perfect provision on the subject in the Articles of Confederation, as observed by Mr. Justice Story, 'was intended to give the same conclusive effect to judgments of all the States, so as to promote uniformity, as well as certainty, in the rule among them; and had three distinct objects; first, to declare, and by its own force establish, that full faith and credit should be given to the judgments of every other State; second, to authorize Congress to prescribe the manner of authenticating them; and third, to authorize Congress to prescribe their effect when so authenticated. Story on the Constitution, Sections 1307, 1308.' Congress, in the exercise of the power so conferred, besides prescribing the manner in which the records and judicial proceedings of any

State may be authenticated, has defined the effect thereof, by enacting that 'the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken.' Rev. Stat., Section 905, re-enacting Act of May 26, 1790, c. 11, 1 Stat. 122." (146 U. S. 684-685.)

The effect, to be given in one State to the judgment of a court of another State, is the same as the effect, given by the courts of the State where such judgment was rendered, to that judgment. (Renaud v. Abbott, 116 U. S. 277; Hanley v. Donoghue, 116 U. S. 1.)

"By the settled construction of these provisions of the Constitution and Statutes of the United States a judgment of a State court in a cause within its jurisdiction and against a defendant lawfully summoned, or against lawfully attached property of an absent defendant, is entitled to such force and effect against the person summoned or the property attached when the question is presented for decision in a court of another State as it is in the State in which it was rendered.

Judgments recovered in one of the States of the Union, when proved in the courts of another, differ from judgments recovered in a foreign country in no other respect than that of not being re-examinable upon the merits nor impeachable for fraud in obtaining them if rendered by a court having jurisdiction of the cause and of the parties."

In Mills v. Duryee, February, 1813, U. S. Supreme Court, 2 Am. Leading Cases, 725; 7 Cranch. 481. Error to the Circuit Court for the District of Columbia in an action of debt upon a judgment of the Supreme Court of the State of New York, to which defendant below pleaded *nil debet*, which plea, upon demurrer, adjudged bad.

STORY, J.:

"It is argued that this act, Article 4, U. S. C., Sec. 1, provides only for the admission of such records as *evidence*, but does not declare *the effect* of such evidence when admitted. This argument cannot be supported. The act declares that the record, duly authenticated, shall have such faith and credit as it has in the State Court whence it is taken. If in such court it has the faith and credit of evidence of the highest nature, viz., *record evidence*, it must have the same faith and credit in every court.

"It only remains, then, to inquire in every case what is the effect of the judgment in the State where it was rendered. In the present case the defendant had full notice of the suit, for he was arrested and gave bail.

"The pleadings in an action are governed by the dignity of the instrument on which it is founded. If it be a record conclusive between the parties, it cannot be denied but by the plea of *nul tiel record*, and when Congress gave the effect of a record to the judgment, it gave it all the collateral consequences. The law is undoubted that an exemplification is decisive. The original need not be produced. Counsel contends the judgment of the State Courts ought to be considered *prima facie* evidence only. If so, this clause in the constitution would be utterly unimportant and illusory. The common law would give judgments precisely the same effect. It is manifest that the Constitution contemplated a power in Congress to give a conclusive effect to such judgments. And we can perceive no rational interpretation of the act of Congress, unless it declare a judgment conclusive when the court of a particular State where it is rendered would pronounce the same decision."

Article IV is Mandatory.

My contention, under Article 4, is that it is mandatory upon this court to declare the Court of New York *shall* give validity or full faith and credit to the Pennsylvania judgment — not faith and credit alone, but *full* faith and credit, such judgment being regular and valid in Pennsylvania and never attacked there, and no fraud being therein found by the New York Court. The word "full" in this Article was not idly used by the masters who framed the Constitution. It means what it says, and "full" can only mean vital, virile, real "faith and credit" that carries with it just that effect *everywhere* in the sisterhood of States that Article 4 was drafted to secure.

Unless it is construed as mandatory then is Article 4 perfunctory and of no real force and effect. It was drawn to prevent conflict of laws, conflict of States, modes of evasion by States of other State laws, unless its place in the Constitution is made *faineant*, like the Clovingian kings, by some other construction.

"In Rem."

If, however, a suit for divorce is an action *in rem*, then the Pennsylvania judgment is binding under the decisions already made by this court. The following authorities hold the Pennsylvania judgment was *in rem*. The *res* was the *status*. The court there acquired jurisdiction of the parties by the presence of the *status* in the person of Mr. Bell.

Rigney v. Rigney, 127 N. Y. 408.
1 Greenl. Ev. 525.
Bishop Mar. & Div., II Vol., Secs. 20, 23, 26, 27, 183.
Garner v. Garner, 56 Md. 127.
Bunnell v. Bunnell, 25 Fed. 214.
Harding v. Allen, 9 Greenl. 140.
Black on Judgment, 2nd Vol., Sec. 822.
Freeman on Judgments, Vol. 1, Sec. 313. Vol. 2, Secs. 606, 584, 586.
Niboyet v. Niboyet, 4 P. D. 1–12.
Ellison v. Martin, 53 Mo., 575–578.
2nd Smith's Leading Cases, 6 Amer. Ed. 670.
Da Costa v. Villa Real Strange, 691.
Bunting's Case, 4 Coke, 29.
Kerns Case, 7 Coke, 42.
Meddowcroft v. Huguenin, 4 Moore, 386.
Peny v. Meddowcroft, 10 Beav. 122.
Hood v. Hood, 110 Mass. 463.
Smith v. Smith, 13 Gray, 209.
In re Newman, 75 Cal. 213.

The New York Court of Appeals held in Rigney v. Rigney (*supra*), which was reversed by this court upon another point, that a suit for divorce, though not strictly a proceeding *in rem*, is of the nature of such a proceeding or *quasi in rem*, in so far as it effects the marital status of the parties; but as to alimony and costs it is a proceeding *in personam*.

It also holds each State can determine the *status* of its own citizens, but such determination has no effect beyond such State. Whither leads such logic?

If the court had jurisdiction its decision as to the *status* should be binding everywhere, unless shown to be a judgment

coram non judice, and so void everywhere. *It is binding everywhere or void everywhere. Reason can survive no other logic.*

Divorce then, in so far as it effects the marital *status* being *in rem*, the doctrine laid down by Mr. Justice Field in Pennoyer v. Neff should enforce our Pennsylvania decree in New York:

> "Except in cases affecting the personal *status* of the plaintiff, or where the judgment is sought as a means of reaching property within the State, or affecting some interest therein — in other words, where the action is of a nature of a proceeding *in rem*, substituted service is not effectual.
>
> Pennoyer v. Neff, 95 U. S. 714.

> "The granting of divorces being within the competency of the legislature of the territory, its motives in passing the act in question (divorcing the parties) cannot be inquired into. Having jurisdiction to legislate upon the status of the husband, he being a resident of the territory at the time, the validity of the act is not effected by the fact that it was passed upon his application and without notice to or knowledge by his wife, who, with their children had been left by him two years before in Ohio, under promise that he would return or send for them."
>
> Maynard v. Hill, 125 U. S. 190.

This case came up on appeal (October, 1887) to this court from the Territory of Washington. At the time of obtaining his divorce Maynard was a resident of that part of the Territory of Oregon, which, at the time of the action of Maynard v. Hill, was part of Washington Territory, and not part of the State of Oregon.

In this respect, therefore, a decree of the only court empowered to grant divorces in the Territory of Oregon, in 1852, was set up as a bar to an action brought in the Territory of Washington, and its validity was sustained, though there was no service within the State to the defendant, or any notice whatever.

In Gould v. Crow, 57 Mo. 200, the Court says:

> "When a husband or wife is domiciled within a particular State the courts of that State can take jurisdiction

over the *status* and for proper cause as on this *rem*, and dissolve the relation. The decree so pronounced is a judgment *in rem*, and when not affected by fraud, is valid anywhere, and under the Constitution of the United States such decrees are entitled to full faith and credit in all States and Territories. But such judgments when rendered on orders of publication can only have effect on the thing acted on by the decree, and such rights as are dependent upon that for existence. Therefore if the court on severing the marriage tie undertakes to render a decree *in personam* as to alimony it can have no extra territorial effect. But the marriage *status* being acted upon and dissolved by the decree, the relation becomes severed and continues so in all other States and Territories, and property rights dependent alone upon its continued existence must cease, not only within the State where the divorce was rendered but in all other dominions."

This court has always held that marriage is not simply a civil contract but is a relation and a *status*, and the procedure dissolving it is distinct from those affecting other contracts. In the Darmouth College case, it said:

> "The provision of the Constitution never has been understood to embrace other contracts than those which respect property or some object of value and confer the rights which may be asserted in a court of justice. It never has been understood to restrict the general right of the legislature to legislate on the subject of divorce." (4 Wheaton, 629.)

In Cheever v. Wilson, 9 Wall. 123, the Court said:

> "It is said the petitioner went to Indiana to procure the divorce, and that she never resided there. The only question is as to the reality of her new residence and change of domicile. That she did reside in the county where the petition was filed is expressly found by the decree. Whether this finding is conclusive or only *prima facie* sufficient is a point on which the authorities are not in harmony. We do not deem it necessary to express any opinion upon the point. The finding is clearly sufficient until overcome by adverse testimony. None adequate to that result is found in the record. Giving to what there is the fullest effect, it only raises a suspicion that the *animus manendi* may have been wanting. It is insisted that Cheever never resided in Indiana; that the domicile of the husband is the wife's, and that she can not have a different one from his. The converse of the latter proposi-

tion is so well settled that it would be idle to discuss it. The rule is that she may acquire a separate domicile whenever it is necessary or proper that she should do so. The right springs from the necessity for its exercise, and endures as long as the necessity continues. The proceedings for a divorce may be instituted where the wife has her domicile. The place of the marriage, of the offense, and of the domicile of the husband are of no consequence."

In Pennoyer v. Neff, this Court said:

"To prevent any misapplication of the views expressed in his opinion, it is proper to observe that we do not mean to assert, by any thing we have said, that a State may not authorize proceedings to determine the status of one of its citizens towards a non-resident, which would be binding within the State, though made without service of process or personal notice to the non-resident. The jurisdiction which every State possesses to determine the civil status and capacities of all its inhabitants involves authority to prescribe the conditions on which proceedings affecting them may be commenced and carried on within its territory. The State, for example, has absolute right to prescribe the conditions upon which the marriage relation between its own citizens shall be created, and the causes for which it may be dissolved. One of the parties guilty of acts for which by the law of the State a dissolution may be granted may have removed to a State where no dissolution is permitted. The complaining party would, therefore, fail if a divorce were sought in the State of the defendant; and if application could not be made to the tribunals of the complainant's domicile in such case, and proceedings be there instituted without personal service of process or personal notice to the offending party, the injured citizen would be without redress. Bishop on Marriage and divorce, Section 156."

In Cheeley v. Clayton, 110 U. S. 701–705, Mr. Justice Gray, delivering the opinion of this Court, said:

"The courts of the State of the domicile of the parties doubtless have jurisdiction to decree a divorce in accordance with its laws for any cause allowed by those laws, without regard to the place of the marriage or to that of the commission of the offense for which the divorce is granted; and a divorce so obtained is valid everywhere. (Story, Conflict of Laws, Sec. 230a; Cheever v. Wilson, 9 Wall. 108; Harvey v. Farnie, 8 App. Cas. 43.) If a wife is living apart from her husband without sufficient cause,

his domicile is in law her domicile; and in the absence of any proof of fraud or misconduct on his part, a divorce obtained by him in the State of his domicile, after reasonable notice to her, either by personal service or by publication in accordance with its laws, is valid, although she never in fact resided in that State. (Burlen v. Shannon, 115 Mass. 438; Hunt v. Hunt, 72 N. Y. 218.) But in order to make the divorce valid, either in the State in which it was granted or in another State, there must, unless the defendant appeared in the suit, have been such notice to her as the law of the first State requires."

Text Writers on "In Rem."

Bishop on M., D. and S., vol. 2, secs. 137 and 153, says divorce operates *in rem*.

"Where only the applicant for a divorce is before the Court, and the defendant is domiciled in another State, a decree reducing such applicant's *status* from marital to non-marital, operating thus *in rem* and not *in personam*, has no element whereof either the other married party, or the State of his domicile, is entitled to complain.

"By the very fact that the parties are permanently dwelling *animo non revertendi*, within different sovereignties, the marriage has ceased to be of any practical effect; it exists only in theory of law.

"There is no ground, therefore, for the one State, or for the party domiciled in it, to object when the other State chooses to change its theory of law as to its party, and hold him not to be married.

"As the laws of our States—at least most of them—now are, a married man who has ceased to have a wife, is not married.

"After an *ex parte* divorce rendered upon a mere constructive notice, the defendant being domiciled in another State and not in fact appearing, the latter's *status* still remains to the determination of his State, not that of the State in which his divorce was granted. For in the right to fix the *status* of the citizen the two States stood and still stand equal. Now there are various ways in which a married *status* may be created, adjusted or terminated. The exceptional one is by a decree of the Court. Commonly the *status* is created by an act *in pais* termed a marriage ceremony. Ordinarily it is dissolved by another act *in pais*, death. The rule is universal in all times and countries that when a married man has ceased to have a wife, or *vice versa*, the marriage *status* is at an end. It

makes no difference whether the loss of the consort comes by death or divorce. If the divorcing court had no jurisdiction whatever over the defendant, yet it could and did reduce the plaintiff's *status* from marital to non-marital, the defendant in the other country would simply be bound by it to the same extent as if the decree of dissolution were rendered by death, yet no further. The law of defendant's domicile would be no more outraged in the one case than in the other. It would still remain true at the defendant's home, that the man who has a wife is a married man, and the one who has none is not.

"Rejecting some judicial dicta not amounting to decision, more or less adverse, and not taking into the account such cases as the early North Carolina one now overruled, the present clear American doctrine, made conclusive by decisions of the court of ultimate resort, accepts *ex parte* divorces pronounced by the court of the applicant's domicile in full compliance with the local law, after its constructive notice to the absent defendant, as adequate everywhere to dissolve or otherwise ascertain the marriage status."

Greenleaf on Ev., Sec. 525, says:

"An apparent exception to this rule as to the identity of the parties is allowed in the cases usually termed proceedings *in rem*, which include not only judgments of condemnation of property as forfeited or as prize in the Exchequer or Admiralty, but also the decisions of other courts directly upon the personal status or relations of the parties, such as marriage, divorce, bastardy, * * * and the like. These decisions are binding and conclusive not only upon the parties actually litigating in the cause but upon all others * * * partly upon the more general ground of public policy and convenience, it being essential to the peace of society that questions of this kind should not be left doubtful, but that the domestic and social relations of every member of the community should be clearly defined and conclusively settled and at rest."

Freeman on Judgments, 585, says:

"The conclusions which are sustained by a decided majority of the cases are very clearly and correctly stated by Mr. Cooley in his work on Constitutional Limitations, in the following language: 'We conceive the true rule to be that the actual *bona fide* residence of either husband or wife within a State will give to that State authority to determine the status of such party, and to pass upon any

question affecting his or her continuance in the marriage relation, irrespective of the locality of the marriage or of any alleged offense, and that any such court in that State as the legislature may have authorized to take cognizance of the subject may lawfully pass upon such questions and annul the marriage for any cause allowed by the local law. But if a party goes to a jurisdiction other than that of his domicile for the purpose of procuring a divorce, and has residence there for that purpose only, such residence is not *bona fide*, and does not confer upon the courts of that State or country jurisdiction over the marriage relation, and any decree they may assume to make would be void as to the other party.'"

In Black on Judgments it is said, sec. 925 to 932:

"In the first place, a proceeding in divorce is a proceeding *in rem*. It is not an action by the petitioner against the defendant, at least not primarily. It is a proceeding by the petitioner to obtain an adjudication upon his or her marital status, which is the *res;* and the person who has the nearest interest in that status, and whose acts are alleged to have given rise to a cause for its dissolution, is named and cited as defendant. In the next place, it is an admitted principle of international law that every State has the sole and paramount right to legislate and adjudicate upon the status of its own domiciled citizens, and to regulate and determine their domestic relations. These two principles will furnish the key to the whole subject. For, accepting them as true, it at once becomes apparent that the jurisdiction in divorce must depend solely upon the domicile of the parties—upon the power to adjudicate upon their status—and not upon any question of service of process.

"If both the married parties are *bona fide* domiciled citizens of a given State, there can be no question of the power of the courts of that State to divorce them. It is immaterial that the marriage was celebrated in another State, and that the laws of such other State do not recognize the cause alleged as sufficient ground for granting a divorce. Wherever the parties go they carry their status with them, and it becomes subject to the jurisdiction of any State in which they acquire an actual domicile. And the causes for altering or dissolving that status must be determined by the laws of the State which has present jurisdiction over it, not by the laws of the State where it originated. Further, in this case, it is immaterial where the offense was committed which is alleged as ground for divorce. If both parties were domiciled in one State, and

the offense charged was perpetrated there, and both afterwards remove to another State and acquire a domicile there, the latter State has jurisdiction to dissolve the marriage on the ground of such offense. Here again it is the law of the State having control of the status which must govern, not the *lex loci delicti*.

"It now remains for us to consider the case in which the petitioner is a domiciled citizen of the State where the proceedings in divorce are taken, and the defendant is domiciled elsewhere. And on the admitted principle that each State has the right to determine the status and the domestic relations of its own citizens, the conclusion appears irresistible that the *bona fide* presence of the *res* —the status of a domiciled citizen—should give its courts jurisdiction. If this were not so, neither of the two States in which the parties are respectively resident, nor both together, could exercise this unquestioned right. But the question, though easily soluble on purely logical grounds, may also be treated as one settled by authority. And the decided weight of authority is in favor of the rule here contended for. In this connection it must be observed that the usual rule, that the domicile of the wife follows that of the husband, does not apply in these cases. For the purpose of petitioning in divorce, she may have a separate domicile. The law will recognize her as having a separate existence, and separate rights and interests, in all cases where the very object of the proceeding is to show that the relation itself ought to be dissolved, or so modified as to establish separate interests, and especially a separate domicile and home.

"If it be conceded that a divorce proceeding is a proceeding *in rem*, it will necessarily follow that actual and personal notice to the defendant is not indispensable. The vital requisite is the jurisdiction of the *res*. And power and authority over the *res*, as we have shown, depends upon the actual and *bona fide* domicile of the petitioner within the State. This being secured, it is immaterial that the other party is only constructively notified of the institution of the proceedings. The citation should be the best that the circumstances permit, and such as will tend to prevent fraud. But it is by no means necessary that it should be the same as is required to justify a judgment *in personam*. This rule is sustained by a great preponderance of authority, as will appear in the next section.

"Although the foregoing arguments have generally been accounted complete and irrefragable, yet some of the courts, while conceding one or more of the separate points,

have refused to accept the conclusion to which the whole line of reasoning logically and inevitably leads. Thus the books exhibit a few decisions, and some dicta, to the effect that a decree of divorce against a non-resident, founded upon a merely constructive service of process, as by publication, is void and of no effect. But some of these cases have been overruled; others have been tacitly repudiated, and the true and fundamental principles governing the question have become more and more clear to the courts and have gained weight with the increasing body of decisions. So that now the rule be regarded as settled, by the great preponderance of authority, that a decree of divorce pronounced by a competent court, in favor of a *bona fide* domiciled citizen of the State and against a non-resident, where service of process was made by a reasonable constructive notice, and in the absence of any fraud or collusion, is valid and binding both in that State and in all other States."

The English Cases.

I will not go into the English cases. Lolley's case, the Farnie case, and all the others are not important here. I have cited (*supra*, p. 12) what is more to the point here, Schilsby v. Westerholz, overruling Buchanan v. Rucker, the foundation stone of Borden v. Fitch, and the Baker case.

All these English cases contain law with which I have no dispute. Judgments sued upon in London, coming from all parts of England's empire, from China, Ceylon, Cypress, Asia and Africa, and even the Island of Tobago, are not parallel cases to judgments of our sister States, under Article 4 of our Constitution. We have out-Englished the English on this question, with the usual result. England says now, not in the language of New York's cast-iron philosophy, but in words like these, in the case above quoted:

"'Can the Island of Great Britain pass a law to bind the whole world?' We think in each case the answer should be No, but every country can pass laws to bind a great many persons, and therefore the further question has to be determined, whether the defendant in the particular suit was such a person as to be bound by the judgment which it is sought to enforce?"

So in this case, to be concrete, I think "the defendant in is particular suit," with an ~~Indiana~~ marriage to start with, th her ten years residence in ~~Indiana~~ after she left her hus- id in New York, with her leaving ~~Indiana~~ on November 14, 4, directly upon receiving notice of the pendency of the Pennsylvania action against her, *to avoid its legal effect on her in Illinois*, and her commencement of this action within a month, the summons being dated December 10, 1894, with her full knowledge of the pendency of the Pennsylvania action, which was not tried until December 19, 1894, is a defendant that should be bound by the decree pleaded in defense to her action.

Mr. Bell's Domicile.

The plaintiff's reply alleges Mr. Bell never became a resident of Pennsylvania, and that any pretended proceedings taken by him there were a fraud upon the rights of Mrs. Bell and upon the laws of the two States (R. 8).

Upon the trial of the action not one word of testimony was introduced by plaintiff to sustain these allegations — not one. No reference even was made to Mr. Bell's residence in any way by any witness, or by counsel.

What occurred was this (R. 42). Mrs. Bell's attorney said:

> "I want to introduce in evidence *some records bearing upon the question of alimony*. I first offer in evidence the petition and affidavit in the matter of the probate of the will of Alfred Bell," etc.

This was received under objection as Exhibit "C."

Counsel then said:

> "I also offer in evidence the petition for the probate of the will of Julie Bell, the mother of the defendant, in which the value of the estate is stated," etc.

This was admitted under objection as Exhibit "D."

Counsel then said:

> "I also offer in evidence certified copy of the decree fixing the value of the property under the will of defendant's father, subject to the inheritance tax," etc.

This was admitted under objection as Exhibit "E."

The record contains this statements (R. 47):

> "None of said Exhibits, 'C,' 'D' and 'E,' or above decree fixing value of the property, were read before or after being offered in evidence *until the summing up by plaintiff's counsel.*"

Then he read for the first time the affidavit (fol. 158) attached to Exhibit "D," as to defendant's residence.

This was the first I knew of its existence or the claim of counsel that he sought to introduce such exhibits for any other purpose than the limitation which he gave them in offering them in evidence. The record shows that at this point the following occurred (R. 129):

> "I ask leave to open defendant's case, and call Mr. Bell, and I offer to show by him that he did not read the joint petition for the probate of his mother's will signed by himself and his sister. I also offer to show that he was told by his attorney, who drew the petition, that it simply stated the facts of the mother's death, residence, etc., and that he did not know it contained any reference to his own residence; that he would not have made the affidavit had he known the petition stated he was a resident of this State, because such was not the fact."

Plaintiff's counsel objecting, the referee said:

> "If I thought it were of any importance in defendant's case, I would allow you to open it, *but I do not think the testimony of any importance.* I also sustain plaintiff's objection on the ground that the testimony included in the offer is incompetent."

Exception to defendant. The referee *held the testimony of no importance*, yet upon it, surreptitiously introduced as it was, he bases his eighth finding, that defendant was not a *bona fide* resident of Pennsylvania.

This finding was the act of a hostile referee, whose hostility to Mr. Bell was unknown at the time I agreed upon him as referee. A just referee when he saw how we had been surprised and deceived by counsel's offer would have said, "You may reopen your case. I want to hear all I can about this." Instead, the referee said, "*I do not think the testimony of any importance.*" By that remark I was further mislead, our testimony was shut out, and days after the referee makes that finding, a perfectly unjust and unsustained one, unnecessary,

too, because the law of the Baker case would defeat us in New York, and also legally unnecessary for all the decisions hold the Pennsylvania decree could not be attached collaterally by such a finding, based on such testimony.

I had a right to explain this affidavit. If, for instance, witnesses had testified that Mr. Bell had sometime told them he was not a resident of Pennsylvania, or was never there, it would be competent for him to deny this.

As regards the validity in New York of the decree of a court of competent jurisdiction in a sister State, the *status* of the parties within that State, and the question whether they, or any of them, were residents of that State, for the purposes of such decree, are to be determined by that court, and that determination cannot be questioned collaterally in New York.

Kinnier v. Kinnier, 45 N. Y. 535.

The defendant in the above case, in her answer, *denied that her husband ever became a resident of* Illinois, but that he went there with a view of claiming the benefit of the laws of Illinois in divorces, and that he was in fact a resident of New York.

Judge Church in his opinion said (at page 540):

> "Viewing them (the above allegations in the answer) in the most favorable light, the question is presented whether the Illinois decree can be attacked in this State in a collateral action, because the plaintiff in that action was not actually a *bona fide* resident of that State at the time? I think not. It is conceded he was there, appeared in that court and filed his bill and took the decree. The question whether he was a resident there, so as to enable him to file his bill, was for that court to determine, and although it may have decided erroneously, the decision cannot affect the validity of the judgment. The *status* of all persons within a State, is exclusively for that State to determine for itself. * * * A wrong decision does not impair the power to decide, or the validity of the decision when questioned collaterally. Every judgment may be impeached for fraud or want of jurisdiction, and this rule applies as well to judgments of other States as to those rendered in our own. *But there must be facts* which show it to be against conscience to execute the judgment, and which the injured party could not make available in a court of law, or which he was prevented from presenting by fraud or accident, unmixed with any fraud or negligence in himself or his agents."

In Laing v. Rigney (reversing upon another point Rigney v. Rigney, 127 N. Y. 408), decided by this Court January 13, 1896, this Court quotes and approves Nash v. Williams, 87 N. S. 226, which says:

> "The settled rule of law is that jurisdiction having attached in the original case, everything done within the power of that jurisdiction, when collaterally questioned, is to be held conclusive of the rights of the parties, unless impeached for fraud. Every intendment is made to support the proceeding. It is regarded as if it were regular and irreversible for error. In the absence of fraud no question can be collaterally entertained as to anything lying within the jurisdictional sphere of the original case. Infinite confusion and mischief would ensue if the rule were otherwise."

Mr. Bell made his domicile in Pennsylvania in 1892. All his property was in that State and he had lived there for fifteen years before coming to Buffalo. The plaintiff's testimony shows him at his coal mines in Pennsylvania more than six months in every year even while residing in Buffalo. He was the best known man in that county, where he was the largest soft coal miner in America, employing four thousand men. It was his natural domicile after his home had been broken up. Even the referee, in his opinion (R. 19), concedes him a nominal residence in Pennsylvania, and that being conceded, the authority of Hunt v. Hunt, 72 N. Y. 217, makes it impossible to question the jurisdiction of the Pennsylvania court over Mr. Bell.

The referee says (fol. 57):

> "No evidence was offered to show that the defendant actually changed his domicile from this State to Pennsylvania."

This is a fair sample of the referee's state of mind towards Mr. Bell. It was not necessary to introduce such evidence, until some evidence attacking the Pennsylvania judgment had been put in by plaintiff, and, as I have said, this affidavit was secretly introduced. The petition for probate, to which it was attached was prepared in ex-Postmaster-General Bissell's office by clerks who knew nothing about Mr. Bell's matters, Mr. Bissell being the lawyer of Mr. Bell's firm and of his sister,

Mrs. Lewis, and so drew the petition for her, while I was Mr. Bell's counsel in other matters.

In this way the mistake occurred. Every lawyer knows that business men immersed in as large affairs as Mr. Bell never read carefully such papers. They take a clerk's word as to the substance.

Mr. Bell was in Pennsylvania all this period. I was present with him on December 19, 1894, at the trial of his action, at Brookville.

There is no finding by the referee of any fraud in procuring the Pennsylvania judgment.

He does not find Mr. Bell a resident of New York, or any other place, in fact, for that matter.

I argued this exception fully before the Appellate Division. I called its attention to this grave injustice, this stigma put upon the name of one of the most prominent, and honorably prominent, business men who ever lived in Buffalo, by a finding based upon testimony *secretly* and misleadingly introduced, without chance to explain or contradict, but the Appellate Division never, in its opinion, referred to the said exception, or otherwise noticed it. Afterwards Judge Green of said Court stated to me that the Court did not refer to this finding because where they were going to beat a party on the law or on a greater question they did not go into the lesser ones. I was ready upon the trial to litigate the question of fraud set up by plaintiff's Reply, but, as I have said, during the whole trial not one bit of testimony was offered by plaintiff upon this point.

The fact was, Mr. Bell had taken up in Pennsylvania in 1892 that residence which establishes the relation between the man and the State, and creates domicile, while his presence in Buffalo, uncertain as it was (where one of his business offices was), was like the residence of Mr. Platt in New York City in the quarantine case. "Residence and domicile are two perfectly distinct things," said Lord Westbury, as cited in People v. Platt, 50 Hun, 460. All that the surrogate's petition recites against Mr. Bell is the statement that his *residence* was Buffalo.

Under the decisions, then, the finding of the referee that defendant was not a *bona fide* resident of Pennsylvania has no effect whatever upon the merits of the law question raised by this record.

Mrs. Bell's Domicile.

Mrs. Bell left Mr. Bell September, 1882, and returned to her mother's house to live, in Illinois. From that date until November 14, 1894 (fol. 83), she lived continuously in Illinois, excepting when in Europe (fol. 80).

This makes her, up to that date, a resident of Illinois, under the decision in Matter of Florence, 54 Hun, 328; affirmed, 119 N. Y. 661. This case held where a wife left her husband in New York and returned to Philadelphia and lived there apart from him for twelve years, that she acquired a domicile apart from her husband's and had returned to her domicile of origin.

Her brother, a deeply interested party, testified under objection that Mrs. Bell had made declarations to him that she was a resident of Buffalo (R. 27). A deed was offered in evidence (R. 51), dated November 17, 1883, whereby Mr. Bell sold his home fifteen months after her desertion, in which, of course, she had to be joined, and in which her residence is referred to as Buffalo. Mr. Ansley Wilcox, who drew this deed, testified (R. 105) that he "drew the description out of his own head;" *that he did not know where Mrs. Bell was, and had no instructions from her, and that he drew it at the request of Mr. Rumsey.* There is, therefore, no competent testimony upon her domicile save that to be deduced from the fact of her returning, in 1882, to her domicile of origin.

Domicile is of three kinds: First, domicile of origin or nativity. Second, domicile of choice, which is voluntarily acquired. Third, domicile by operation of law, as that of a wife arising from marriage.—*Century Dictionary.*

Domicile depends, not upon citizenship or presence, but upon the concurring of two elements: First, residence in a place. Second, the intention of the person to make that place his home.—*Century Dictionary.*

The burden of proof is upon the party who asserts the change. It is rather a question of fact than of law.

Dupuy v. Wurtz, 53 N. Y. 556-561.

This change must be *animo et facto*, and the burden of proof unquestionably lies on the party who asserts the change.

A. and E. Encyl. of Law, Vol. 5 p. 865, and cases cited.

Nothing is better settled with reference to the law of domicile, than that domicile can be changed only *animo et facto*, and although residence may be decisive as to the *factum*, it cannot, when looked at with reference to the *animus*, be regarded as otherwise than as an equivocal act.

A. and E. Encyl. of Law, Vol. 5 p. 877, Note 1.

There is no doubt that Mrs. Bell received the examiner's notice of hearing early in November, 1894, and that at or before that time the construction service of the process upon her was complete. It is dated November 3, 1894 (R. 232). The examiner's report stated he mailed a copy of said notice to Mrs. Bell twenty days before the date of hearing, which would be November 14, 1894, and if he mailed it about the time it is dated, as is probable, she would have received it about November 6th.

Mrs. Bell's friend, Mrs. Jewett, testified (R. 29) that Mrs. Bell left her home in Jewettville, N. Y., November 21st, after a four or five days' visit, and the referee, in his opinion (R. 19) says Mrs. Bell "returned to this State with the avowed purpose of bringing this suit for divorce."

Therefore, Mrs. Bell, having received notice in Illinois, where she had resided for over eleven years of the pendency of the Pennsylvania action, leaves that State for the pnrpose of avoiding the legal effect of that suit upon her there, and rushes into New York to sue Mr. Bell here, rather than go into Pennsylvania and answer, where her rights could have been fully protected. The referee gives great sanctity to her three weeks' residence here, in face of these facts, a residence by which New York law puts South Dakota to blush. Mrs. Bell's determined stand against divorce for eleven years in Illinois, was only suddenly changed when she was served in that State, early in November, with notice of pendency of the Pennsylvania action. From every point of view the Pennsylvania judgment has more justice, legal right and honor in it.

"Full Faith and Credit" will be as a Magna Charta to American Jurisprudence.

I have argued as to the logic involved in the present philosophy of New York's divorce law. I have said that the people could understand it, if its courts refused to admit foreign divorces if granted for grounds other than our one ground, as in Lolley's case in 1812.

The people could understand it if, further, New York had refused to recognize as legal marriages those contracted in other States by defendants found guilty of adultery in this State, on the ground they left this State to evade its statute.

Such a decision would protect the citizens of New York and Justice would still hold the *substance* of this question in the hollow of her hand. But what avails the present state of our case law to wives or children now? What avails it to a woman to be told her husband's divorce in a foreign State is not valid here, when he can remarry in the State of his new domicile, and return with his new wife, and live with her in the same street, next door to his former wife. Wife number one clutches the shadow presented to her by the logic of the Baker case, but the substance and the life of law, which inherently protects rights which are of value, is not with her. Instead of being protected by the Baker case, she is, in fact, injured by it; children are injured by it; property rights confused by it.

If this great court would hold that "full faith and credit" should be given to each State's judgments it would bring a great peace upon the land. Evils utterly irremedial now, would be remedied then. A state of law which every able lawyer and jurist admits in private to be disgraceful would be forever removed. *Uniform divorce law will not cure* this conflict of judgments as well as of laws. The evils of divorce have nothing whatever to do with the question at bar. Those evils to children and innocent wives or husbands are terribly augmented by the present decisions.

If this court should hold valid everywhere those judgments wherein the defendant had knowledge of the pendency of the action though *pure* reason does not even require that, will any wrong follow, commensurate with the great benefits conferred?

Is it any hardship that one should have to go outside one's State to defend? In most cases there is no defense or no wish to defend. Love has long been dead. If any injustice *is* intended by the action let the defense be put in once for all, having the opportunity given it, or else forever after hold its peace.

I respectfully submit that the judgment in this case should be reversed.

HENRY H. SEYMOUR,
Counsel for Plaintiff in Error.

INDEX.

PAGE.

STATEMENT, ... 1

THE PENNSYLVANIA JUDGMENT, ... 3

THE ANSWER PLEADING THE PENNSYLVANIA JUDGMENT, . 4

THE PENNSYLVANIA REFEREE'S REPORT, ... 6

THE ILLINOIS STATUTE ON CAUSES FOR DIVORCE, ... 10

ERRORS ASSIGNED, ... 5

THE PENNSYLVANIA JUDGMENT ON ITS MERITS, ... 6

THE NEW YORK DECISIONS AND THEIR HISTORY, ... 11

JUDGE DANFORTH'S DISSENTING OPINION IN FAVOR OF THE "FOREIGN" JUDGMENT, ... 15

JUDGE PRYOR'S DENUNCIATION OF NEW YORK'S PHILOSOPHY, ... 17

WHAT FAITH AND CREDIT IS A JUDGMENT OF ONE STATE ENTITLED TO IN ANOTHER? 18

Constitution of the United States, Art. 4, Sec. 1.
Huntington v. Attrill, 146 U. S. 684–685.
Hilton v. Guyot, 159 U. S. 113.
Richie v. McMullen, 159 U. S. 235.
Renaud v. Abbott, 116 U. S. 277.
Hanley v. Donoghue, 116 U. S. 1.
D'Arcy v. Ketchum, 11 How. 175.
Thompson v. Whitman, 18 Wall. 464.
Knowles v. Gas Light Co., 19 Wall. 61.
Christmas v. Russell, 5 Wall. 290.

ARTICLE IV IS MANDATORY, ... 20

IF A SUIT FOR DIVORCE IS IN REM, THE PENNSYLVANIA JUDGMENT IS CONCLUSIVE, ... 21

PAGE.

TEXT-WRITERS ON "IN REM" AND DIVORCE, ... 25

2 Bishop on M. & D., Sec. 152.
1 Greenleaf on Evidence, Sec. 525.
2 Freeman on Judgments, 585.
2 Black on Judgments, Secs. 925, 926, 928, 931, 932.

ENGLISH CASES, ... 12, 29

Lolley's Case, 2 Rus. & R. C. C. 237.
Shaw v. Gould, L. R. 3 H. of L. 55.
Warrender v. Warrender, 2 C. & F. 488.
McCarthy v. DeCaix, 2 C. & F. 568.
Maghee v. M'Allister, 3 Irish Ch. Rep. 604.
Harvey v. Farnie, L. R. 8 App. Cases, 43.
Le Mesurier v. Le Mesurier, L. R. App. Cases (1895), 517.

MR. BELL'S DOMICILE IN PENNSYLVANIA, ... 30

MRS. BELL'S DOMICILE IN ILLINOIS, ... 35

THE BENEFITS IF ARTICLE IV IS ENFORCED, ... 37

AGAINST RESIDENTS PERSONAL PROCESS NOT NECESSARY.

Knowles v. Gas Light Co., 19 Wall. 61.
Grover & Baker Machine Co. v. Radcliffe, 137 U. S. 297.
Bersenthal v. Williams, 1 Duval (Ky.), 331.
Beard v. Beard, 21 Ind. 321.
Hunt v. Hunt, 72 N. Y. 217.

CONSTITUTION AND STATUTES OF UNITED STATES APPLY TO JUDGMENTS IN DIVORCE CASES.

Barber v. Barber, 21 How. 583.
Cheever v. Wilson, 9 Wall. 123.
Laing v. Rigney, 160 U. S. 532.

IF AN ACTION FOR DIVORCE IS IN PERSONAM, THE PENNSYLVANIA JUDGMENT IS BINDING.

Cheeley v. Clayton, 110 U. S. 701.
Hood v. Hood, 11 Allen, 196.
Warrender v. Warrender, 2 C. & F. 508.

THE NATURE OF A SUIT FOR DIVORCE.

Dartmouth College Case, 4 Wheaton, 629.
Cheever v. Wilson, 9 Wall. 123.
Pennoyer v. Neff, 95 U. S. 734.
Cheeley v. Clayton, 110 U. S. 701–705.
Hilton v. Guyot, 159 U. S. 113–167.
Maynard v. Hill, 125 U. S. 191.

CONSTRUCTIVE PROCESS IS EFFECTUAL IF FAIR.

Pennoyer v. Neff, 95 U. S. 727.
2 Bishop on M. & D., Secs. 554, 140, 144.
Trubner v. Trubner, L. R. 15 P. D. 24.

DECISIONS OF STATE COURTS.

Thompson v. State, 28 Ala. 13.
James Estate, 99 Cal. 374.
Dunham v. Dunham, 162 Ill. 589.
Tolen v. Tolen, 2 Blackford (Ind.), 407; S. C., 21 A. D. 742.
Van Orsdall v. Van Orsdall, 67 Ia. 35.
Rogers v. Rogers, 56 Kas. 481.
Smith v. Smith, 43 La. Ann. 1140.
Gregory v. Gregory, 78 Me. 187.
Harding v. Alden, 9 Greenleaf (Me.), 40; 23 A. D. 549.
People v. Dazwell, 25 Mich. 261.
Ellenwood v. Marietta Chair Co., 158 U. S. 106.
Thurston v. Thurston, 58 Minn. 279.
Gould v. Crowe, 57 Mo. 201.
Felt v. Felt (Ch. N. J. 98); 40 Atl. 436.
Cox v. Cox, 19 Ohio St. 415; S. C., 2 A. R. 415.
Dorsey v. Dorsey, 7 Watts, 349; S. C., 32 A. D. 767.
Hull v. Hull, 2 Strobhart's Eq. (S. C.), 178.
Thoms v. King, 95 Tenn. 60.
Ditson v. Ditson, 4 R. I. 87.

THE MASSACHUSETTS CASES.

Harteau v. Harteau, 14 Pick. 181; 26 A. D. 372.
Hood v. Hood, 11 Allen (Mass.), 196.
Ross v. Ross, 129 Mass. 243.
Burlen v. Shannon, 115 Mass. 447.
Hood v. Hood, 110 Mass. 463.
Shaw v. Shaw, 98 Mass. 158.
Loker v. Gerard, 157 Mass. 42.

REVIEW OF THE NEW YORK CASES.

Williams v. Williams, 130 N. Y. 193.
Rigney v. Rigney, 127 N. Y. 408.
Laing v. Rigney, 160 U. S. Rep. 531.
De Meli v. De Meli, 120 N. Y. 485.
Jones v. Jones, 108 N. Y. 415.
Cross v. Cross, 108 N. Y. 628.
Kerr v. Kerr, 41 N. Y. 272.
O'Dea v. O'Dea, 101 N. Y. 23.
People v. Baker, 76 N. Y. 78.
Hunt v. Hunt, 72 N. Y. 217.
Hoffman v. Hoffman, 46 N. Y. 30.
Morrison's Case, 52 Hun, 102.
Matter of Morrison, 117 N. Y. 638.
DeGaramo Case, 86 Hun, 390.
Campbell v. Campbell, 90 Hun, 233.
Matter of Dennick, 92 Hun, 161.
McGown v. McGown, 1 App. Div. 368.
Davis v. Davis (1893), 2 Mis. R. 549.

No. Orig. 39

Brf. of Wheeler for D.

Office Supreme Court U.S.
FILED
APR 14 1900
JAMES H. MCKENNEY,
Clerk.

Filed April 14, 1900.

BRIEF FOR DEFENDANT IN ERROR.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 265.

FREDERICK A. BELL, PLAINTIFF IN ERROR,

vs.

MARY G. BELL.

CHAS. B. WHEELER,

Counsel and Attorney for the Defendant in Error,

117 Erie County Savings Bank, Buffalo, N. Y.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 265.

FREDERICK A. BELL, PLAINTIFF IN ERROR,

vs.

MARY G. BELL.

POINTS FOR MARY G. BELL, THE DEFENDANT IN ERROR, ON ARGUMENT OF WRIT OF ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK, TO REVIEW A JUDGMENT GRANTING A DECREE OF DIVORCE TO THE SAID MARY G. BELL FROM HER HUSBAND, FREDERICK A. BELL.

HISTORY OF THE CASE.

This action was begun by Mrs. Mary G. Bell against her husband, Frederick A. Bell, in the Supreme Court of the State of New York, by the personal service of the summons and complaint on him, on the 22d day of December, 1894. The complaint alleged as grounds of divorce the commission of acts of adultery by the defendant, Frederick A. Bell. (See complaint, p. 1 and 2.) The defendant answered. In his answer he denied the allegations of adultery on his part (p. 3); set up, by way of counterclaims, alleged adulteries by the plaintiff, his wife, and, as a further defense and bar to Mrs. Bell's action, pleaded the recovery by him of a decree of divorce from Mrs. Bell in the Court of Common Pleas of the State of Pennsylvania, on the 8th day of January, 1895 (p. 3). This Court will note the Pennsylvania divorce was not granted until about three weeks after Mrs. Bell had begun her own action. Mrs. Bell replied to the answer, denied the allegations of adultery on her part, and, touching the Pennsylvania divorce, alleged that no process from the Pennsylvania Court had ever been served on her; that she never had been, or was, a resident, or citizen, of the State of Pennsylvania; that said Court of Pennsylvania never had, or obtained, any jurisdiction over her, or the subject-matter of the action; and further alleged that Frederick A. Bell, the defend-

ant, never had been, or was, a resident of the State of Pennsylvania, but that all the times in question was and remained a resident and citizen of the State of New York (p. 5), and that any pretended proceedings in the Courts of Pennsylvania were taken by said Frederick A. Bell for the purpose of evading the laws of the State of New York, and were a fraud upon the rights of the plaintiff and upon the laws of the State of New York and of the State of Pennsylvania (p. 5).

The issues thus framed were referred upon stipulation and order to Mr. Spencer Clinton, a distinguished member of the Buffalo bar, to hear, try and determine.

This case was tried before the Referee, and on the 8th of June, 1895, the Referee made his decision and report, in and by which he directed judgment in favor of Mrs. Bell, dissolving the marriage relation, and directing the payment to her by her husband of the sum of $3,000 per annum, as alimony. (See Referee's report, p. 7.) This report of the Referee was confirmed by the order of the Court, and final judgments entered thereon. From that judgment the defendant, Mr. Bell, appealed to the Appellate Division of the Supreme Court, which Court affirmed the judgment. The opinion of Mr. Justice Follett, on that decision, will be found on pages 79 to 81 of the record. From the judgment of affirmance the defendant appealed to the Court of Appeals of the State of New York. The judgment was again affirmed, and upon the filing of the remittitur from that Court the judgment of the Court of Appeals was made the judgment of the Supreme Court.

The case is now brought before this Court on a writ of error, upon the claim of the plaintiff in error that the provisions of the Constitution of the United States requiring full faith and credit to be given the judicial proceedings of other States was violated by the refusal of the Courts of New York to recognize the validity of the Pennsylvania decree of divorce in favor of Mr. Bell. The validity of the Pennsylvania decree is the only question presented to this Court for review. (See assignments of error, pages 87 and 88 of Record.)

It is important to briefly set out the material facts disclosed by the evidence given on the trial.

FACTS.

The evidence in the case fully supports all the findings of fact made by the Referee, and his conclusions of law thereon. The evidence shows that the parties were married at Bloomington, Illinois, on the 24th day of January, 1878, at the residence of the plaintiff's parents (p. 15). After this marriage they lived a year or two in the City of Rochester (p. 15), and then moved to the City of Buffalo, where they continued to live together until about the 1st of September, 1882 (p. 15), when the plaintiff was

compelled to leave her husband's home in Buffalo under the following circumstances:

A few days prior to the final separation Mrs. Bell had occasion to go to Bloomington on a visit to her mother (pp. 18, 59, 63). She went simply for the purposes of a visit (p. 59). The plaintiff's counsel has asserted that Mrs. Bell on this occasion deserted her husband, although the plaintiff's own witness testified that she was simply "*going for a visit*" (p. 59). If we may be permitted to speak outside the record, we might say that while on this visit Mrs. Bell received a letter from her husband telling her he did not wish to see her again. After she had reached Bloomington her husband, the defendant, packed her wardrobe and other belongings in trunks, and moved these trunks and her piano out of the house into the stable (pp. 18, 59, 63). Within a few days Mrs. Bell returned to Buffalo with her mother, Mrs. Gridley, and went at once to her old home, and was greeted by her servants, "Mrs. Bell, we are glad you have come back before your things are all gone" (pp. 18, 59, 63).

She tried to gain admission to Mr. Bell's room (p. 59). The next day Mr. Bell left the house (p. 59), and stayed away for a week. Mrs. Bell, having thus been ejected from her own home, returned with her mother to Bloomington, and never lived with Mr. Bell afterwards. These facts are briefly found by the Referee in his report. (See finding IV., pp. 7, 8.)

This separation was not of Mrs. Bell's seeking. It was forced upon her. Notwithstanding the dissolute life of her husband, she continued to hope for a reunited married life. It appears that the plaintiff wrote her husband a number of letters, undoubtedly touching on the subject of a reunion, which, however, he did not answer until July, 1891. In a letter written to Mrs. Bell, he refers to the receipt of several letters from Mrs. Bell, tells her his love for her is "*dead and buried, and can never be revived*" (pp. 28, 29); tells her "*it is all over now, and we have only to make the best of what the future may have in store*" (p. 29), and suggests Mrs. Bell's taking steps for a divorce. Mrs. Bell wished no divorce, and took no steps to procure one. The defendant sent his counsel, Mr. Seymour, to Bloomington, to see Mrs. Bell personally, and urge her to get a divorce; and on July 17, 1893, wrote the plaintiff again, saying that since their separation he had been waiting for her to take some steps toward procuring a legal separation (pp. 27, 28), and adding, "*Of course, Mary, by this time, any hopes of any "reconciliation between us, as far as our being any more to "each other than we are at present, must by you have been aban-"doned.*" And in the same letter again tells her she must procure a divorce or he will "*take matters in his own hands.*"

By Section 831 of the New York Code of Civil Procedure it is provided that: "A husband or a wife is not competent to tes-"tify against the other upon the trial of an action," . . . . "founded upon an allegation of adultery, except to prove the "marriage, or disprove an allegation of adultery." Conse-

quently, Mrs. Bell was unable to testify to any of the circumstances attending their separation; and many matters of detail were necessarily omitted from the case; but the great, salient facts touching the separation are unchallenged and undisputed.

These facts had an important bearing not only on the question of the residence and domicile of Mrs. Bell during the years of separation, but also demonstrated that the pretended desertion for which the Pennsylvania divorce was granted had no facts to support it; and that Mr. Bell imposed on the Pennsylvania Court in claiming any such desertion ever took place. Not only did Mr. Bell deceive the Pennsylvania Court in that respect, but he also imposed on it when, in his petition for divorce, he alleged he was and had been a resident of Pennsylvania for a year (p. 38), as will presently appear.

Events not moving fast enough to suit Mr. Bell, he "*took matters in his own hands,*" and on April 5, 1894, verified and filed a petition for a divorce against this plaintiff in the Court of Common Pleas for Jefferson County, in the State of Pennsylvania. (See defendant's Exhibit 3, pp. 36, 37.) The grounds of the Pennsylvania action was the alleged desertion of Mr. Bell by Mrs. Bell, which we have already seen was absolutely false in fact.

In that action Mr. Bell alleged, and claimed, that he had been a resident of Pennsylvania for a "*year previously to filing this his petition of libel*" (p. 37). The allegation of such Pennsylvania residence was in fact utterly false, for it appears that on the 31st day of January, 1894, Mr. Bell, in connection with his sister, Katharine B. Lewis, signed, verified and filed in the office of the Surrogate of Erie County at Buffalo, New York, his petition for the probate of the last will and testament of Juliett Bell, deceased, their mother, in which petition it is expressly stated that the residence of Mr. Bell is the City of Buffalo (pp. 25, 26). Mr. Bell and Mrs. Lewis were named as executors of their mother's will, and in the oath of office taken and subscribed by them, both again swore that they "*are citizens of the United States, residents of City of Buffalo, in said County of Erie*" (p. 26). So that we have the sworn statement of both Mr. Bell and of his own sister, Mrs. Lewis, that Mr. Bell instead of being a resident of Pennsylvania was in fact a resident of Buffalo, New York. It is most remarkable that Mr. Bell and Mrs. Lewis, his sister, never discovered that the defendant was a resident of the State of Pennsylvania. It would have been difficult to have discovered such was the fact with the defendant living and keeping house next door to his sister in the City of Buffalo. These facts of the residence of Mr. Bell, the defendant, were not disputed or contradicted by a particle of evidence given by the defendant, and the referee found as a matter of fact that "*the defendant was not a bona fide resident of the State of Pennsylvania at the time of the beginning of the action to dissolve the marriage between the plaintiff and defendant, nor at the time of making of the judgment or decree therein.*" (See VIII., finding of referee, p. 8.)

Neither was Mrs. Bell a resident of the State of Pennsylvania. She had never resided there, and was never served with process there. This affirmatively appears by the testimony of Mr. Gridley, the brother of the plaintiff (p. 15), and it further appears from the proceedings in Pennsylvania, that she could not be found by the Sheriff (pp. 39, 40). Accordingly, it appears steps were taken for service of process by publication, and thereafter an order for publication of process was made. It was conceded by the defendant's counsel, on the trial, that no personal service was ever made upon Mrs. Bell in the Pennsylvania action (p. 34), but that whatever service was made was made by publication as upon a "*non-resident*" (p. 34).

It is not claimed that Mrs. Bell in any manner appeared in the Pennsylvania action, or in any way submitted herself to the jurisdiction of the Pennsylvania courts.

The only notice it is shown that Mrs. Bell had of the pendency of the Pennsylvania action is that on the 1st day of December, 1894, a printed copy of the subpœna and of a hearing by the examiner was mailed from Reynoldsville, Pa., to Mrs. Bell at Bloomington, Ill., at 1 P. M. That on reaching Bloomington, Mrs. Bell not being at Bloomington, the notices were forwarded from Bloomington to her at Brooklyn, where it appears they reached the post-office on December 4th, at 10 A. M., the very day set by the examiner in Pennsylvania for a hearing, and after the hour named for the hearing (p. 35). It appears, however, that owing to some delays the final decree in Pennsylvania was not taken until January 8, 1895 (p. 47). In the meantime, however, and on the 10th day of December, 1894, before any decree of divorce had been obtained in Pennsylvania, Mrs. Bell verified her complaint for a divorce in this action, and on the 22d day of December, 1894, also before any decree had been rendered in Pennsylvania, the summons and complaint were personally served on the defendant, Mr. Bell (p. 31).

Upon these facts, and upon the strength of an unbroken line of decisions, the Referee found the Pennsylvania decree of divorce had no binding force or effect, and constituted no defense to this action.

The allegations of adultery on the part of the defendant, Mr. Bell, were fully sustained by the evidence.

It appears that after the separation of the parties to this action, the defendant went to live at the "Genesee" Hotel in the City of Buffalo, where he had a suite of apartments, in which, however, there was only one bed. It was shown by the testimony that one of the defendant's acquaintances was one May Martin. That he was accustomed to visit her at the house where she lived; that in the month of April, 1890, Mr. Bell was indulging in a drinking spree in his rooms at the "Genesee," when this woman sought and obtained admission to his rooms; that on that occasion she remained living with the defendant in his rooms for one week. That at the end of the week, Mr. Bell left the rooms with the Martin woman, escorted her arm in arm to the elevator, and directed the chambermaid to change the

bedding of his bed. (See testimony of Annie Enright, pp. 19 to 22.)

It was further shown that in May, 1890, this same May Martin came to the Genesee Hotel, and took a room on the same floor with those occupied by Mr. Bell, and that on that occasion Mr. Bell entered her room late on a Saturday night, and remained there until noon of the following day. (See testimony of Annie Enright, pp. 29 to 34.) On other occasions May Martin visited his rooms and he hers (p. 36). It further appears that the Martin woman was not the only one with whom adultery was committed. During the same year, and at the same hotel, it was shown that another woman, whose name is unknown, was accustomed to come to the hotel and to share his room with him (p. 36).

The principal witness as to these transactions was Annie Enright, the chambermaid employed at the "Genesee," who had particular care of Mr. Bell's rooms, but her evidence was fully and completely corroborated by the testimony of Frank J. Doyle, who was "head-hall-man" at the Genesee, and who swore to answering a call from Mr. Bell's room, early one morning, and finding it occupied by Mr. Bell and a woman whom he did not know. He further testifies that on this occasion Mr. Bell was partially undressed, having on only his trousers and undershirt. (See testimony of Doyle, p. 16.) Doyle also gave testimony of the visits of women on other occasions to Mr. Bell's rooms.

Annie Enright was also fully corroborated by George D. Barrett, who was a bell-boy at the "Genesee," and responded to calls from Mr. Bell's rooms, and who testified to repeatedly seeing women in Mr. Bell's rooms, sometimes early in the morning, sometimes late at night, and who also testified that on one morning he saw in Mr. Bell's room a woman in bare arms, low neck, without the waist of her dress on, evidently not yet having completed her toilet. On these occasions it further appeared that Mr. Bell was on a spree, and the calls were for drinks, water and sandwiches. The same witness testifies to seeing one woman in his rooms who remained for a week at a time. (See Barrett's testimony, p. 23.)

Edward J. Futterer was another witness called by the plaintiff. He was an hotel attendant, who answered the bell call from Mr. Bell's rooms one morning and there found the room occupied by a woman (p. 24).

Mr. Bell, the defendant, did not take the stand to deny the testimony of the witnesses in question. It was competent for him, if innocent, to take the witness stand to deny the commission of adultery. He did not call other witnesses, or in any manner impeach or break the force and effect of this evidence. Their statements stand admitted, and the Referee could draw but one inference and conclusion from it, viz: the commission of adultery by the defendant as charged.

The commission of this adultery as a fact is embodied in the XI. findings of his report (p. 9).

The countercharge made by Mr. Bell against his wife was absolutely disproved, and the Referee so found. (See Referee's finding XV., p. 9.)

It is fair to remark in this connection that if Mr. Bell had had any just cause of complaint against his wife there was no necessity of his going to the Courts of Pennsylvania for a divorce.

The only error assigned is that the Courts of New York violated the provisions of the Constitution of the United States requiring "*full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State,*" in that they have refused to recognize the validity of the decree of divorce granted Mr. Bell against Mrs. Bell in Pennsylvania (p. 88).

The only proposition open for discussion is the validity of the Pennsylvania decree. Upon that question the counsel for the defendant in error submits the following points of law:

FIRST.

The Courts of Pennsylvania had no jurisdict on to grant the divorce given Mr. Bell and the Pennsylvania decree is, therefore, void, and was no defense to the action brought by Mrs. Bell against her husband in New York.

This proposition involves the whole case, and is based upon the facts found in the case, and affirmed by the courts of review on the various appeals which have been taken. We particularly call the attention of this Court to these findings of fact.

1st. That Mr. Bell at the time of instituting the Pennsylvania proceedings, and at the time of the granting of the decree, was not a *bona fide* resident of the State of Pennsylvania, but a resident of the State of New York. (See Referee's finding No. VIII. and VII., page 8, also Exhibit D, p. 26, in which Mr. Bell and his sister both state under oath that at times in question he was a resident of the City of Buffalo, N. Y.)

2d. That the plaintiff, Mrs. Bell, was not at the time of the commencement of this action, and never had been, a resident of the State of Pennsylvania. (See Referee's finding No. IV., pp. 7 and 8.)

3d. That at the time of the commencement of this action, and also at the time of the commencement of the action by the defendant in Pennsylvania, Mrs. Bell was a resident of the State of New York.

4th. That the alleged cause of action for which the Pennsylvania divorce was granted did not arise in Pennsylvania, but if any desertion ever took place (which, in fact, never did take place) it occurred in the State of New York, and not in Pennsylvania. (See petition, p. 37, and Referee's finding Nos. IV. and VI., pp. 7 and 8.)

5th. That Mrs. Bell was never personally served with any process in the Pennsylvania action, but the only service claimed was by publication of the subpœna. (See Pennsylvania decree pp. 38 to 48, and statement of defendant's counsel, p. 34, also finding of referee, No. VII. p. 8.)

6th. That Mrs. Bell did not appear in the Pennsylvania action either in person or by attorney. (See Referee's finding, VII., also record of Pennsylvania divorce.)

7th. That prior to the rendering of any decree in the Pennsylvania Courts this action for a divorce in New York State was begun against Mr. Bell by the plaintiff. (This action was begun December 22, 1894. The Pennsylvania decree was not granted until January 8, 1895. Referee's finding VI.)

8th. That the Pennsylvania divorce was procured on the pretended ground of the plaintiff's desertion of defendant, whereas, in truth and in fact there never was any such desertion by the plaintiff, but a desertion by Mr. Bell, the defendant.

9th. Mr. Bell imposed on the Pennsylvania Courts by claiming a year's residence in that State, when, in fact, he was a resident of New York.

10th. That a *pluries subpœna* was issued on the 14th of September, 1894, in the Pennsylvania action, requiring Mrs. Bell to show cause, on the second Monday (10th day) of December, 1894, why a divorce should not be granted. This subpœna, pursuant to an order of the Court, was published for four successive weeks, in the *Brookville Republican*, in the issues of October 17, 1894, October 20, 1894, October 31, 1894, and November 7, 1894, and on December 1, 1894. The *pluries subpœna* was enclosed in a post-paid envelope and addressed "Mrs. Mary G. Bell, Bloomington, Ill.," and deposited in the post-office at Reynoldsville, Pa. It was received at Bloomington, Ill., and forwarded by the post-office authorities to Mrs. Bell at Brooklyn, N. Y., where she received it December 4, 1894. The same day the examiner appointed to take evidence in the case mailed a notice to her at Bloomington, Ill., that he would attend to the duties of his appointment December 4, 1894, which notice Mrs. Bell received at Brooklyn, N. Y., December 4, 1894, the very day appointed to take the evidence. These notices actually received on December 4, 1894, constitute the only notice actually had by the plaintiff, Mrs. Bell, of the pendency of the Pennsylvania action.

11th. That the Pennsylvania divorce was granted for the alleged ground of the wife's desertion, whereas by the New York statutes the only grounds for an absolute divorce are those of adultery.

This Court must accept and cannot review the findings of fact of the Trial Court.

St. Louis vs. Rutz, 138 *U. S.*, 226.
Ruckle vs. Burnham, 153 *U. S.*, 216.
Laing vs. Rigney, 160 *U. S.*, 536.

These findings of fact involve the very jurisdiction of the Pennsylvania Court to entertain the action there brought by Mr. Bell, and are conclusive on this Court notwithstanding any recitals of the Pennsylvania decree, for nothing is better established than the proposition that:

"Neither the Constitutional provision that full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State, nor the Act of Congress passed in pursuance thereof prevents an inquiry into the jurisdiction of the Court by which a judgment offered in evidence was rendered."

Thompson vs. Whitman, 85 *U. S.*, 457.
Knowles vs. Gaslight and Coke Co., 86 *U. S.*, 61.
Reynolds vs. Stockton, 140 *U. S.*, 265.
Kilbourn vs. Thompson, 103 *U. S.*, 198.
Hill vs. Mendenhall, 88 *U. S.*, 454.
Hall vs. Lansing, 91 *U. S.*, 165.
Penoyer vs. Neff, 95 *U. S.*, 714.
Brooklyn vs. Insurance Co., 99 *U. S.*, 370.
Pana vs. Bowler, 107 *U. S.*, 545.
Kerr vs. Kerr, 41 *N. Y.*, 272.
Cross vs. Cross, 108 *N. Y.*, 628.
Rigney vs. Rigney, 127 *N. Y.*, 408.
Sewell vs. Sewell, 122 *Mass.*, 156.
Price vs. Schaeffer, 161 *Pa.*, 530.
People vs. Dowell, 25 *Mich.*, 247.
Vanfleet Collateral Attack, 388, 389.

II. It appearing, therefore, from the facts found that neither Mr. Bell nor Mrs. Bell were residents of the State of Pennsylvania, the Courts of Pennsylvania had no jurisdiction to grant any divorce whatever, and the divorce is therefore absolutely void.

This case does not present for consideration the question what effect and force should be given a divorce granted by the Courts of a sister State where the complainant is a *bona fide* resident of such State, where no personal service is made on the other party who is a non-resident. Such was the Atherton case recently argued before this Court.

This case only presents the simple question as to the force and effect of a decree of a sister State where neither husband nor wife are or were residents of the State granting the divorce; and where nothing but a substituted or constructive service of process was made on the defendant, and that service outside the boundaries of the State in which the divorce proceedings were instituted.

While there has been more or less lack of harmony in the decisions of the Courts of different States as to the force and effect of divorces procured in other States against absent defendants, there is, nevertheless, no conflict whatever over this proposition, stated in the language of the distinguished text writer, Mr. Schuler, as follows: "The Courts of one State are not bound to "recognize a judgment of divorce granted by the Courts of "another State, if, in fact, the parties were neither of them *bona* "*fide* residents of the latter State at the time of the divorce "suit; for to give the Courts of any State jurisdiction over the "marriage relation, one of the parties at least must have a "genuine domicile within its territory, and not a mere residence "for the purpose of the divorce. If the parties have neither of "them a domicile in the State, a divorce which the Courts of that "State assume to grant is absolutely nugatory, and may be so "treated in other States."

Schuler on "Husband and Wife," § 574.

In *Sewell vs. Sewell*, 122 *Mass.*, 156.

Mr. Justice Gray, in the opinion of the Court, said that: "Where a husband goes into another State, without acquiring a "domicile there, for the purpose of obtaining, and does fraudu- "lently obtain, a divorce for a cause which occurred in, but "which was not a cause of divorce by the law of Massachusetts, "a Court of that State has no jurisdiction, and its decree grant- "ing the divorce is entitled to no faith and credit in Massachu- "setts as a judicial proceeding, even if the decree recites facts "sufficient to give it jurisdiction."

In *Hoffman v. Hoffman*, 46 *N. Y.*, 30, the plaintiff brought an action for divorce on the ground of the defendant's adultery. The defendant plead, as a defense, a divorce obtained by him in Indiana. It appeared the defendant applied to a court in Indiana, and obtained a judgment, but when he applied it appeared both parties, in fact, resided in New York. The Indiana divorce was held void. Judge Peckham, speaking for the Court of Appeals, said: "It thus appears that this defendant ob-"tained this judgment in Indiana by fraud. By fraud upon the "laws of that State as well as of this. . . . It is impossible "to sustain this Indiana judgment without coming in conflict "with every decision of our own Courts touching this question." . . . . "It is the settled doctrine of this State that such "record is not conclusive as to the question of jurisdiction." . . . "The Constitution did not mean to confer a new power "or jurisdiction, but simply to regulate the effect of the ac-"knowledged jurisdiction over persons and things within the "State. (*Story's Com on Con; Mills v. Duryee*, 2 Am. L. Cases, "623, *note.*) The necessary effect of sustaining this decree would "be, to allow any other State substantially to make laws for "this State, to regulate not only our domestic relations of hus-"band and wife, but almost every other right.

"A Court has no more authority to assume jurisdiction over "a marriage contract than over any other subject, without due "service of process or the appearance of the party defendant."

In the case of *People vs. Dowell*, 25 *Mich.*, 247, the defendant was indicted and convicted of bigamy. He claimed as a defense a divorce obtained by his first wife on her application in the State of Indiana. It appeared that the first wife, in fact, lived in Michigan although claiming a residence in Indiana, and that the husband appeared by attorney in the Indiana proceeding, and admitted the wife's residence to be in Indiana. The Indiana divorce was held invalid. Judge Cooley said in his opinion: "*I understand the rule to be, that to give the Courts of any* "*State jurisdiction over the marriage relations between a hus-*"*band and his wife one of the parties at least must have a* "*domicile within that State. Some of the judicial decisions* "*make further requirements, but no Court has ever held* "*that any less could be demanded*" (p. 254).

Referring to the provision of the constitution that full faith and credit shall be given to use judicial proceedings of other States Judge Cooley pertinently remarks: "Its whole purpose "and aim was in the direction of justice, comity, and good "neighborhood between the States; and it would be most re-"markable if it could now be employed to bolster up a proceed-"ing where a Court of one State has interfered with a matter "which wholly pertains to the concerns of another State, and "relates to its citizens exclusively, which it is impertinent for "such Court in any manner to meddle with, and which justice, "as well as every principle of comity, requires such Court to let "alone. If the constitutional provision can be so employed,

"then I do not hesitate to say, that it is capable of accomplish-
"ing more evils than it had power to prevent; and that, too, in
"the very direction in which its good influences were anticipated.
"For the effect is to destroy interstate comity and good neigh-
"borhood by enabling one State to extend its laws and legal
"procedure into the domains of its neighbors, to subject the
"citizens of such neighbor to its control in their most important
"relations of life, and to introduce among them practices which
"their own laws regard in a very high degree vicious and de-
"moralizing."

He might have added that the marriage relations would in effect be regulated and governed not by the laws of the State of residence, but imperiled by the laws of that State of the Union which made divorces easiest and most convenient. The marriage relations would not be sustained and fostered by the most enlightened legislation of educated and thoughtful people, but would be at the peril of the legislation of States where the moral and social plane is the lowest.

Says Judge Cooley in his work on "Constitutional Limitations" (p. 401):

"If a party goes to a jurisdiction other than that of his domi-
"cile for the purpose of procuring a divorce, and has residence
"there for that purpose only, such residence is not *bona fide*,
"and does not confer upon the Courts of that State or County
"jurisdiction over the marriage relations, and any decree they
"may assume to make would be void as to the other party."

Citing:

Hanover vs. Turner, 14 *Mass.*, 227.
Greenlaw vs. Greenlaw, 12 *N. H.*, 200.
Kimball vs. Kimball, 13 *N. H.*, 225.
Bachelder vs. Bachelder, 14 *N. H.*, 380.
Payson vs. Payson, 34 *N. H.*, 518.
Hopkins vs. Hopkins, 35 *N. H.*, 474.

See also the cases of

Gregory vs. Gregory, 78 *Me.*, 187.

Holding that even the presence within its territory of the inhabitants of other States gives it no authority to grant a divorce and thus change their marriage status: also

Foss vs. Foss, 58 *N. H.*, 283.
Leith vs. Leith, 39 *N. H.*, 20.
Lane vs. Lane, 2 *Mass.*, 167.
Squire vs. Squire, 3 *Mass.*, 184.
Choate vs. Choate, 3 *Mass.*, 391.
Barber vs. Root, 10 *Mass.*, 260.
Kimball vs. Kimball, 63 *N. H.*, 598.
Dutcher vs. Dutcher, 39 *Wis.*, 658.

Even the Pennsylvania Statute was violated by the decree given Mr. Bell.

The statute of Pennsylvania under which the Court of that State assumed jurisdiction expressly provides that "no person "shall be entitled to a divorce from the bond of matrimony, by "virtue of this act, who is not a citizen of this State, and who "shall not have resided therein at least one whole year previous "to the filing of his or her petition or libel."

Pepper and Lewis "Digest of the Laws of Pa.," p. 1639.

It is evident, therefore, that Mr. Bell, the defendant, was guilty of an imposition on the laws of Pennsylvania, as well as a fraud on the laws of New York.

At the time of the preparation of these points this Court has still under advisement the case of *Atherton v. Atherton*, argued and submitted in January. If this Court in its final decision of that case should affirm the judgment of the New York Courts, the plaintiff in error here would hardly be expected to further argue against the validity of the divorce in favor of Mrs. Bell given her by the Supreme Court of New York.

If, on the other hand, this Court should reach a contrary decision in the Atherton case, and hold that the Kentucky divorce obtained by Mr. Atherton against his wife was a bar to her action in New York, such a conclusion would not justify a reversal of the decree of divorce in Mrs. Bell's favor in this case, because the facts on which jurisdiction depends in the two cases are entirely different.

In the Atherton case the husband was a bona-fide resident of Kentucky, he was born there, and always lived in that State. He took his wife to live in Kentucky after their marriage. He continued to reside in Kentucky after their separation, although the wife returned to New York. It was in Kentucky that the husband subsequently instituted his action for divorce against his wife, and there obtained his decree. So that in the Atherton case we have this fact which distinguishes it from this case. That Mr. Atherton was a *bona fide* resident of Kentucky all the time, and at one time at least Mrs. Atherton was also a resident of Kentucky, whereas in our case neither Mr. Bell or his wife, Mrs. Bell, ever had been residents of Pennsylvania. If the Supreme Court of the United States in deciding the Atherton case should hold that the Kentucky Courts had jurisdiction to grant a valid divorce to Mr. Atherton on the ground that it had the right to determine the marital status of its own citizens; such a decision would not in any manner sustain the Pennsylvania Court in awarding Mr. Bell a divorce where it affirmatively appears that neither he or Mrs. Bell were residents of that State.

If the Atherton case should be decided before this is argued, Counsel for Mrs. Bell will doubtless submit further suggestions as to its force and effect.

Wherever divorces granted by the Courts of other States upon substituted service of process have been sustained it has

been upon the theory that marriage was a *status*, and that e
State had the right to determine the status of its own citize
Whether that theory will be ultimately established or not i
immaterial so far as this case is concerned, except that
very statement of the proposition carries with it the cou
proposition that no State has the right to determine the *sta*
of citizens of another State, which is the very thing the Pe
sylvania Courts had assumed to do.

**Even had Mr. Bell been a bona fide resident of Penn
vania, the divorce obtained by him in that State wo
nevertheless, be void for want of jurisdiction.**

So far as this argument is concerned, Mrs. Bell's case mi
safely rest on the foregoing decisions, unanimously holding
where neither party to a divorce is a resident of the State gr
ing the decree, the Court has no jurisdiction whatever to en
tain the action.

A more interesting question would have been presented
review had the evidence and the finding of fact been that
Bell, at the time of instituting his proceedings in Pennsylva
was a *bona fide* resident of that State. The evidence and
finding of fact was, however, just the opposite, that Mr.
was not a *bona fide* citizen of Pennsylvania at that time,
was a resident of the State of New York.

We propose, however, for the guidance and informatio
this Court, to present for its consideration a line of author
collected from the United States Courts, and from the var
State Courts, showing that the better authorities hold that
Pennsylvania divorce would be void even had Mr. Bell be
resident of Pennsylvania.

*The Pennsylvania divorce would have been void for wa
jurisdiction to grant it, even had Mr. Bell been a bona
resident of that State, it appearing that Mrs. Bell, his
never was a resident of Pennsylvania, and was never per
ally served with process in that State.*

The United States Supreme Court decisions.

So far as we are aware, this Court has never passed on
identical question presented, but it has at the same time
down and enunciated general principles which we believe
trol, *all holding that the process of the Courts of one State
not run into another State, and summon parties there domi
to respond to the proceedings against them.*

One of the later and leading cases is that of

Pennoyer v. Neff, 95, *U. S.*, 714.

The Court held that a personal judgment is without any validity if it be rendered by a State Court in an action against a non-resident of the State served by publication of the summons, but upon whom no personal service of process within the State was made, and who did not appear.

Speaking of the force and effect of constructive or substituted service of process in lieu of personal service on defendants, this Court said: "Where the entire object of the action is to deter-"mine the personal rights and obligations of the defendants, "that is, where the suit is merely *in personam*, constructive "service in this form upon a non-resident is ineffectual for any "purpose."

"Process from the tribunals of one State cannot run into an-"other State, and summon parties there domiciled to leave its "territory and respond to proceedings against them. Publica-"tion of process or notice within the State where the tribunal "sits, cannot create any greater obligation on the non-resident "to appear. Process sent to him out of the State and process "published within it are equally unavailing in proceedings to "establish personal liability" (p. 727).

. . . . The Court adds that "In all cases brought "in the State and Federal Courts, where attempts have been "made under the act of Congress to give effect in one State to "personal judgments rendered in another State against non-"residents without service upon them, or upon substituted "service by publication, or in some other form, it has been held, "without exception, so far as we are aware, that such judg-"ments were without binding force, except as to property or "interests in property within the State to reach and effect which "was the object of the action in which the judgment was ren-"dered," and "which property was brought under control of the "Court in connection with the process against the person. The "proceeding in such cases, though in the form of a personal "action, has been uniformly treated where service was not ob-"tained, and the party did not voluntarily appear, as effectual "and binding merely as a proceeding *in rem*, and having no ob-"ligation beyond the disposition of the property, or some inter-"est therein" (pp. 730, 731).

. . . . "Since the adoption of the Fourteenth Amend-"ment to the Federal Constitution, the validity of such "judgments may be directly questioned, and their enforcement "in the State resisted on the ground that proceedings in a "Court of Justice to determine the personal rights and obliga-"tions of parties over whom the Court has no jurisdiction do "not constitute due process of law" (p. 733).

The Court added that it does not "mean to assert by anything "we have said that a State may not authorize proceedings to "determine the *status* of one of its citizens toward a non-"resident, which would be binding within the State though "made without service of process or personal notice to the "non-resident. The jurisdiction which every State possesses to "determine the civil status and capacities of all its inhabitants "involves authority to prescribe the conditions on which pro-"ceedings affecting them may be commenced and carried on "within its territory. The State, for example, has absolute "right to prescribe the conditions upon which the marriage re-"lation between its own citizens shall be created, and the causes "for which it may be dissolved. One of the parties guilty of "acts for which by the law of the State a dissolution may be "granted may have removed to a State where no dissolution is "permitted. The complaining party would, therefore, fail if a "divorce were sought in the State of the defendant, and if ap-"plication could not be made to the tribunals of the complain-"ant's domicile in such case, and proceedings be there instituted "without personal service of process, or personal notice to the "offending party the injured citizen would be without re-"dress."

The remarks of the learned justice in the foregoing case so far as the same relate to the jurisdiction of Courts to dissolve a marriage when one party to the suit is an absentee are clearly "*obiter*." He does not assume to speak either for himself or for the Court in that regard, but saves the question for the future consideration of the Court, intimating only that where the guilty party leaves the State of his domicile he ought not to defeat a divorce by evading personal service of process of the Court where the injured party lives, and the cause of action arose. The case certainly clearly intimates that the boundaries defining when and where substituted service may be deemed sufficient to support a divorce are very limited and circumscribed.

In *Knowles vs. Gaslight & Coke Co.*, 86 *U. S.*, 60, which was a case of a suit upon a judgment rendered by another State, in which it appeared by the record that personal service of process had been made on one of the parties; it was held that the defendant and judgment debtor might show in a suit on the judgment that no such service was in fact made. The Court said: "We do not mean to say that personal service is in all "cases necessary to enable a Court to acquire jurisdiction of the "person. Where the defendant resides in the State in which "the proceedings are had, service at his residence, and perhaps "other modes of constructive service may be authorized by the "laws of the State. *But in the case of non-residents, like that "under consideration, personal service cannot be dispensed with "unless the defendant voluntarily appear.*"

In *Insurance Co. vs. Bangs*, 103 *U. S.*, 435, this Court held that in all cases brought to enforce or cancel personal contracts,

or to recover damages for their violation, the law requires personal service of process upon the defendants or their voluntary appearance.

In *Hart vs. Sansom*, 110 *U. S.*, 154, Mr. Justice Gray, speaking for the Court, said. "Generally, if not universally, equity "jurisdiction is exercised *in personam*, and not *in rem*, and "depends upon the control of the Court over the parties by "reason of their presence or residence." It was accordingly held that upon a bill to remove a cloud upon title, as upon a bill for the specific performance of an agreement to convey, the decree, unless otherwise expressly provided by statute, is clearly not a judgment *in rem*, but operates *in personam*, and as against a person not a citizen or resident of the State in which it is rendered can only be supported by actual service of process within its jurisdiction, and that constructive service is insufficient.

See also:

Cooper vs. Newell, 173 *U. S.*, 555.
Goldy vs. Morning News, 156 *U. S.*, 518.
Thompson vs. Whitman, 85 *U. S.*, 457.

This Court has gone so far as to hold that when a defendant appears in an action in a State Court and responds to the complaint as filed, but takes no subsequent part in the litigation, and on those pleadings a judgment is rendered in no way responsive to them, he is not estopped by the judgment from setting up that fact, and the Constitution of the United States is not violated by the entry of a judgment in his favor on such an issue, raised in an action on the judgment brought in a Court of another State.

In *Cheever vs. Wilson*, 76 *U. S.*, 108, the wife having acquired a domicile in Indiana procured a divorce from her husband in the Courts of that State. The husband appeared in that action, and denied the allegations of the wife's bill, and on his part filed a cross bill. Upon the evidence the Indiana Court granted the divorce prayed for by the wife. The validity of the decree was subsequently attacked on the ground that the Court had no jurisdiction, but the Court held the Indiana divorce valid. It is to be noted that in that case the Indiana Court had jurisdiction of both parties, and after a contest between them made its findings.

In *Cheeley vs. Clayton*, 110 *U. S.*, 704, Mr. Justice Gray took occasion to say that the Courts of the State of the domicile of the parties have doubtless jurisdiction to decree a divorce in accordance with its laws, for a cause allowed by those laws, without regard to the place of marriage or to that of the commission of the offense for which the divorce is granted, and a divorce so granted is valid everywhere. . . . "If a wife is living apart from her husband without sufficient cause, his domicile is

in law her domicile, and in the absence of any proof of fraud or misrepresentation on his part a divorce obtained by him in the State of his domicile after reasonable notice to her, either by personal service, or by publication in accordance with its laws is valid, although she never in fact resided in that State.

Citing

Burlew vs. Shannon, 115 *Mass.*, 438.
Hunt vs. Hunt, 72 *N. Y.*, 218.

It will be noted that the opinion proceeds on the theory that both the plaintiff and defendant were domiciled in the State where the suit was brought, and that, therefore, the decree simply established the status of citizens of that State. The case does not hold that where the domiciles of the parties are in fact and in law separate and different that jurisdiction would in such case exist to make a valid decree.

The case of *Cheeley vs. Clayton*, 110 U. S., 704, cites the case of *Hunt vs. Hunt*, 72 *N. Y.*, 217, and appears to be in harmony with the doctrine there laid down that a citizen of a given State "owes it allegiance, and is under the force and authority of its "laws, and so long as he remains in that relation he cannot "throw off his subjection by the act of temporary or prolonged "absence from the State, he is still amenable to those laws, and "bound by their provisions as to substitute service of process."

If, however, the wife or husband never had a domicile in a State, or had in good faith and lawfully terminated a domicile in such State, their allegiance is not owed to the laws of such State, and the provisions for a substituted service of process can not bind or control such persons.

For further cases bearing on the question of want of jurisdiction without personal service as bearing on the constitutional questions involved see

Brooklyn vs. Ins. Co., 99 *U. S.*, 370.
Mohr vs. Manierre, 101 *U. S.*, 422.
St. Clair vs. Cox, 106 *U. S.*, 350.
Pana vs. Bowler, 107 *U. S.*, 545.
Smith vs. Woolfolk, 115 *U. S.*, 149.
Renaud vs. Abbott, 116 *U. S.*, 285.
Freeman vs. Anderson, 119 *U. S.*, 187.

The Law as recognized by the Courts of New York.

The Courts of the State of New York have uniformly refused to recognize the validity of divorces obtained in the Courts o

other States where the defendant has not been personally served with process within the State in which the decree was rendered.

Kerr vs. Kerr, 41 *N. Y.*, 272.
Kinear vs. Kinear, 45 *N. Y.*, 535.
Hoffman vs. Hoffman, 46 *N. Y.*, 30.
People vs. Baker, 76 *N. Y.*, 78.
O' Dea vs. O' Dea, 101 *N. Y.*, 23.
Jones vs. Jones, 108 *N. Y.*, 415.
Cross vs. Cross, 108 *N. Y.*, 628.
Rigney vs. Rigney, 127 *N. Y.*, 408.
Williams vs. Williams, 130 *N. Y.*, 193.
Atherton vs. Atherton, 155 *N. Y.*, 129.
Matter of Kimball, 155 *N. Y.*, 62.
Matter of De Garamo, 86 *Hun.*, 390.

The question has been presented to the Courts upon many and varied state of facts, but the Courts have held steadfastly to the doctrine that Courts of other States acquired no jurisdiction by virtue of a substituted service to determine the marriage status of citizens of New York even though the party instituting the divorce proceedings in another State were at the time a bona fide citizen of that State.

In *Kerr vs. Kerr*, 41 *N. Y.*, 272, a divorce was obtained in Indiana by the husband, in which he falsely alleged he was and had been for the required time a resident of that State. It further appeared that certain attorneys assumed to appear and answer for the wife, although she was not served with process, and had no knowledge of the pendency of the action. The Court held the Indiana Court had no jurisdiction, and the divorce void and invalid.

In *Kinear vs. Kinear*, 45 *N. Y.*, 535, the Court said that judgments of this character may be "impeached for want of jurisdiction and also for fraud. If it appear by the record that the "defendant was not served with process, and did not appear in "person, or by attorney, such judgment is void."

In *Hoffman vs. Hoffman*, 46 *N. Y.*, 30, the plaintiff brought an action for a divorce on the ground of adultery. The defendant plead a divorce obtained by him in Indiana. It appeared that the defendant applied to a Court in Indiana for a divorce and obtained a judgment, but when he applied it appeared both parties in fact resided in New York. The Court said, "It thus appears that this defendant obtained this judgment in Indiana by fraud. By fraud upon the laws of that State as well as of this." . . . "It is impossible to sustain this Indiana judgment without coming in conflict with every decision of our own courts touching this question."

(*Citing Kerr vs. Kerr*, 41 *N. Y.*, 272.)

In *People vs. Baker*, 76 *N. Y.*, 78, the defendant was convicted of bigamy.

It appeared that in 1871 the defendant married one Sallie West, in the State of Ohio. They came to New York to live, and in 1874, while she was still living, married one Eunice Nelson, at Auburn, N. Y. His first wife had instituted divorce proceedings and obtained a decree of divorce in Ohio. The defendant on the trial offered in evidence the record of the divorce obtained by said Sallie, in Ohio, wherein the record showed the proof of service by publication. There was no personal service on or appearance by the defendant. The question was presented as to the sufficiency of the divorce.

The Court held that in order to make a judgment of divorce, rendered by a Court of another State, valid in this State that Court must have "the parties within its jurisdiction," must have "jurisdiction of the subject matter and of the parties" who "must be within the jurisdiction of the Court."

The Court held the Ohio divorce no defence, that a Court of another State cannot adjudge the dissolution of the marital relations of a citizen of this State, domiciled and actually residing here during the pendency of the judicial proceedings in such State without a voluntary appearance on his part, although the marriage was solemnized in such State.

In the case of *O' Dea v. O' Dea*, 101 *N. Y.*, 23, it appeared that Mary O' Dea, the defendant, in 1844 resided in Toronto, Canada, but in that year married one "K.," at Lewiston, N. Y., and lived with him as his wife here until 1860, when she separated from "K." and returned to Toronto, where she continued to live until 1865. "K.," her husband, removed from New York State and became a resident of Ohio, where, in March, 1864, he commenced an action and obtained a divorce for desertion. A copy of the petition and summons issued were mailed the defendant and were received by her. She was present at the taking of the testimony, but took no part, personally or by counsel, and the decree of absolute divorce was granted.

The plaintiff afterwards married the defendant, and they lived together as husband and wife. When the plaintiff brought this action to annul the marriage, because the defendant had never been legally divorced from "K.," held that the Ohio Court acquired no jurisdiction over the defendant, and the decree as to her was inoperative and void.

In *Jones vs. Jones*, 108 *N. Y.*, 415, it appeared that the parties, being residents of the State of New York, married there in 1875. They lived there until 1878, when they separated and the wife went to the house of her parents, and in 1882 removed to Texas. She there began an action for divorce on ground of cruel and inhuman treatment, and a copy of her petition was personally served on the husband in New York City.

The husband appeared in Texas and defended on the merits and as to jurisdiction, but the wife prevailed and an absolute divorce was granted.

The husband, however, prosecuted an action for a divorce in this State, but the Court held that inasmuch as he had submitted himself to the jurisdiction of the Courts of Texas he was bound by the decree, but in discussing the case, say:

"It cannot be doubted, therefore, that the Texas Courts did not acquire jurisdiction of the defendant in the action by the service of a citation here, or that if the defendant has remained silent, taking no notice of the proceeding, no valid judgment could have been rendered against him."

See

Rigney vs. Rigney, 127 *N. Y.*, 498.

In *Cross vs. Cross*, 108 *N. Y.*, 628, a husband went to Illinois, acquired a residence there, and obtained a divorce there, while the wife continued to retain her domicile in New York. She was not served with process in Illinois, and did not appear in the action. It was held the divorce was void.

See also

Rigney vs. Rigney, 127 *N. Y.*, 408.

In *Williams vs. Williams*, 130 *N. Y.*, 193, it appeared that the parties were married in New York in 1879 and lived there until April, 1880, when the defendant refused to permit plaintiff to live with him and they separated. In 1882 the defendant removed to Minnesota. He procured a divorce in Minnesota on the ground of desertion. She was personally served out of that State with the summons and complaint in the divorce suit. It was held that such a divorce was void and that it was not error to exclude the judgment roll when offered in evidence. The Court then repeated what was said in *Jones vs. Jones* that "the "marriage relation is not a *res* within the State of the party "invoking the jurisdiction of a Court to dissolve it so as to "authorize the Court to bind the absent party, a citizen of "another jurisdiction, by substituted service or actual notice of "the proceedings given without the jurisdiction of the Court "where the proceeding is pending."

In *Atherton vs. Atherton*, 155 *N. Y.*, 129, the plaintiff and defendant were married in New York in 1888, and after their marriage went to Kentucky to live. In 1891 the plaintiff separated from her husband and came to New York to live, and in 1892 the defendant commenced an action for divorce in Kentucky, claiming the plaintiff had abandoned him. A decree was obtained. No personal service of process was made on her. The plaintiff then brought an action in New York for a divorce, and as a defense the Kentucky divorce was plead, but the Kentucky decree was held invalid.

In *matter of Kimball*, 155 *N. Y.*, 62, the question as to the validity of a foreign divorce arose on application for appoint-

ment of a representative of an estate. It appears that the m
riage took place in New York, but that the wife subsequen
went to Dakota and obtained a divorce in the Courts of t
State. The summons was personally served on the husband
New York, but our Court held that such service did not give
Courts of a sister State jurisdiction, and that the Dakota divo
was bad.

There is one exception to the general rule requiring perso
service on the defendant to confer jurisdiction, and that exc
tion is recognized and amplified in the important case of

Hunt vs. Hunt, 72 *N. Y.*, 217.

The opinion in that case is very carefully considered and f
quently cited. The Court there held that "in a suit for divor
"a valid judgment *in personam*, so as to effect a dissolution
"the marriage contract, which shall be prevalent everywhe
"may be rendered against a defendant not within the territor
"jurisdiction during the progress of the suit, if that be
"place of his citizenship and domicile, though process be ser
"upon him only in some method prescribed by the laws of t
"jurisdiction as a substitute for personal service, and thou
"he has not voluntarily appeared" (p. 241).

This is upon the theory that so long as a defendant remain
citizen of a given State "he owes it allegiance and is under
"force and authority of its laws; and so long as he remains
"that relation he cannot throw off his subjection by the act
"temporary or prolonged absence from the State. He is s
"amenable to those laws, and bound by their provisions as
"substituted service of process" (p. 239). When, howev
he once ceases to be a resident or citizen of a State he no lon
owes it that allegiance or is bound by the special provisions
its laws, and the proceedings of its Courts can no longer imp
or effect his rights in the absence of personal service within
territorial limits of the State.

It may be further stated that where both parties continue
be residents of a State a decree of divorce only effects the sta
of its own residents, and does not invade the jurisdiction
assume to determine the status of the citizens of a sister Stat

In the case of *People vs. Baker*, 76 *N. Y.*, 78, Chief Just
Folger delivered a most vigorous and instructive opinion,
which he discusses the leading decisions and the princip
involved. Addressing himself to the argument of "*statu*
and of "*proceeding in rem*," often advanced to sustain the ri
of Courts to entertain jurisdiction of actions for divorce,
learned Chief Justice sums up the case with these observatio

"We are not, therefore, satisfied with the doctrine that re
"the validity of such judicial proceedings and sovereign pow
"of a State to determine the *status* of its own citizens, and
"cause it cannot otherwise effectively establish it, asserts

"power to adjudge upon important rights without the party to "be affected, and without giving him the notice which is re- "quired by the principles of natural justice, he being all the "while beyond its jurisdiction. Besides, a just consideration of "what is a proceeding *in rem*, and of the effect of a judgment "therein, shows that the latter does not reach so far as is con- "tended for it. It is a proceeding *in rem* merely. The judg- "ment therein is not usually a ground of action *in personam* "in another jurisdiction, for as a proceeding *in personam*, or "as giving foundation for one, the Court gets no jurisdiction. "How, then, upon such basis, can the judgment be brought here "and made the foundation of an action against one personally. We submit that the doctrine accepted and enforced by the Courts of New York with the exception stated meets all the requirements, and goes as far as it is wise or prudent to go in sustaining foreign divorces.

The doctrine in Pennsylvania.

The decisions of the Courts of Pennsylvania are next considered, because it is the effect of a Pennsylvania decree which is now under consideration. It will be seen that the rule which is recognized in Pennsylvania is in substantial harmony with that which prevails in New York.

The Pennsylvania Courts hold that the injured party in the marriage relation must seek redress in the forum of the defendant, unless where such defendant has removed from what was before the domicile of both.

Calvin vs. Reed, 55 *Pa. St.*, 375.
Elder vs. Reel, 62 *Pa. St.*, 308.

In the case of *Elder vs. Reel*, 62 *Pa. St.*, 308, it appeared the parties were married in Pennsylvania, and that the husband left the wife and went to Tennessee, where, after living six years, he instituted proceedings for a divorce, and obtained a decree, having published his summons against his wife in the manner prescribed by the Tennessee statute. The wife was never out of the State of Pennsylvania, and at the time of the Tennessee divorce was living in Philadelphia. It was held that the Tennessee divorce was a nullity. Mr. Justice Sharswood, in his opinion, said: "That the injured party in the marriage relation must "seek redress in the *forum* of the defendant, unless where such "defendant has removed from what was before the common "domicile of both," and quotes, with approval, the opinion from *Calvin vs. Reed*, 5 *P. F. Smith*, 375, in which it is said: "In a "proceeding to dissolve a marriage the parties stand on a level of "right. When the injured party seeks a new domicile, and the "domiciles are actually different, there is no more reason why "the husband's new domicile should prevail over the wife's, than

"that her's should prevail over his. In this aspect justice "requires that neither should draw the other within the folds of "a foreign jurisdiction.

The case of *Calvin vs. Reed*, 55 *Penn.*, 375, is an important one as upholding the contention made by the defendant in error. The parties moved into Pennsylvania. The husband afterwards removed to Iowa and became a citizen of that State. He subsequently instituted proceedings for a divorce in Iowa, alleging the wilful and malicious desertion of his wife in Pennsylvania. Notice was given by publication. The Pennsylvania Court held the Iowa divorce void. Mr. Justice Agnew said: "Neither the "person nor the property of Mrs. Taylor being within the power "of the Iowa Courts, no extra-territorial effect can be imputed to "its judgments. . . . The law required their mutual consent "to establish the relation (marriage) from which the unity "arises, and the same law of right demands them to be viewed "in their separate natural condition when either proceeds "against the other to destroy this relation. It is the necessary "effect of their being opposite parties in the same proceeding. "Upon a dissolution of the marriage, therefore, each has a right "to be heard as a natural person. This sends us back to the "inquiry how far a State having the right to regulate the civil "*status* of one of the parties, may in so doing alter the *status* "of another over whom it never has had any power." . . . . "Clearly no State right to regulate the status of its own citizens "can justify this. The publication of the notice makes no dif"ference, for back of it lies the want of power of the distant "State to subject her to its jurisdiction. Nothing short of pos"session of the person before or at the time of the proceeding "can warrant this. Even in questions of property the *status* "must be within the State to subject it to jurisdiction, and "beyond the particular property so situated no right can be "affected by a foreign jurisdiction. On what principle of right "or of comity shall the decree of a distant tribunal, never "having acquired jurisdiction from domicile or otherwise over "her cut loose these claims, and disable Pennsylvania from "taking the property of the husband within its borders, to lift "the burden of support from the public shoulders, or from "rendering to the wife judicially that right which she has in her "husband's property and which he has neither carried away with "him nor defeated by his removal? To admit this greater right "of the foreign decree is to derogate from our own sovereignty, "and to withdraw from one of our own citizens the protection "due her. No correct principle of interstate law can demand "this."

The Massachusetts decisions.

In the recent case of *Cummington vs. Belchertown*, 149 *Mass.*, 223, it appeared that parties were married in Massachusetts and

lived together for a period, when the wife was declared insane and committed to an asylum. The husband left Massachusetts and moved to New York, where he procured a decree anulling his marriage, on the ground that it was induced by fraud. Substituted service was made on the wife in Massachusetts. The decree thus procured was set up and relied on in an action by the town for the support of the wife, but the Massachusetts Supreme Court refused to recognize such a decree "upon the "ground . . . that the decree of the New York Court at- "tempts to annul a marriage in Massachusetts, between Massa- "chusetts citizens, and thus affect the legal status of the "woman who has remained domiciled in Massachusetts, and "has never been within the jurisdiction of the New York Court, "and deprive her of the rights acquired by her marriage, and "especially because it declares the marriage void for a reason "on account of which, by the Massachusetts law, it cannot be "avoided. We are of the opinion it should not be enforced "here, and that no principle of interstate comity requires we "should give it effect."

The case of *Harteau vs. Harteau*, 14 *Pick.*, 181, is an important one as further illustrating the attitude of the Massachusetts Courts. In that case the parties were married in Massachusetts, and then removed to the State of New York and took up their residence there. The wife subsequently returned to Massachusetts on account of the husband's desertion and cruel neglect, took up her abode and applied for a divorce in Massachusetts, the husband remaining in New York. The Court dismissed her libel, the Court being of the opinion that both parties having renounced their domicile in Massachusetts, the return of the wife to Massachusetts would not give the Courts of that State jurisdiction over the husband.

The Massachusetts Courts have uniformly refused to recognize the validity of divorces granted by other States where a party has gone into another State without acquiring a domicile there for the purpose of obtaining, and does obtain, a divorce for a cause which occurred in but which was not a cause of divorce by the law of Massachusetts, on the ground that the Court of that State had no jurisdiction, and its decree granting the divorce is entitled to no faith and credit in Massachusetts as a judicial proceeding, even if the decree recites facts sufficient to give it jurisdiction.

Sewall vs. Sewall, 122 *Mass.*, 156.
Hanore vs. Turner, 14 *Mass.*, 227.
Chace vs. Chace, 6 *Gray*, 157.
Lyon vs. Lyon, 2 *Gray*, 368.

On the other hand the Massachusetts Courts have held in a number of cases that if it did not appear that the wife's separation from her husband was for justifiable cause then the domicile of the wife followed that of her husband, and for the

purposes of a divorce the other State will be deemed to have jurisdiction of both parties, and a divorce granted upon substituted service good.

Locker vs. Gerald, 157 *Mass.*, 45.
Burlen vs. Shannon, 115 *Mass.*, 438.
Hood vs. Hood, 11 *Allen*, 196.
Greene vs. Greene, 11 *Pick*, 410.

In other words, the Massachusetts Courts appear to recognize the proposition that in order to render a decree of divorce of a foreign State valid and give it jurisdiction where resort is had to a substituted or constructive service of process the domicile of both parties must be in that State, and that a sister State has no power or jurisdiction to determine the marital status of a *bona fide* citizen of Massachusetts by reason of constructive or substituted service of process.

In this connection it will be proper to add, that Massachusetts Courts also recognize the rule that a wife may obtain a domicile separate and apart from her husband for justifiable cause.

Burlen vs. Shannon, 115 *Mass.*, 438.
Shaw vs. Shaw, 98 *Mass.*, 160.

Vermont Decision.

In *Brosser vs. Warner*, 47 *Vt.*, 667, parties married in New York, and lived there many years as husband and wife, but subsequently went to Shelbourne, Vt., where the husband deserted his wife. She returned to New York and subsequently began an action and obtained a divorce from her husband in the Supreme Court of New York. Notice of the pendency of the action was given by publication and mailing of the summons and complaint to the husband. The husband did not appear, and the divorce was granted. The Vermont Court held that the New York Court obtained no jurisdiction of the husband, and that the decree providing for the payment of alimony was not binding on him in Vermont, and semble that the decree of divorce was void.

New Jersey.

In *Dougherty vs. Dougherty*, 28 *N. J. Eq.*, 581, the parties were married in New Jersey. After a month the husband went to the State of Illinois, where he continuously resided, the wife on the other hand continued to reside in New Jersey. The husband began an action in Illinois for divorce. The wife never resided in Illinois, was never served with pro-

cess there. No notice of the pendency of that action was given her, but the record showed she was served by publication. This Illinois divorce was set up as a defense to an action brought by the wife against her husband, for a divorce, in the New Jersey Courts. The Chief Justice held that while Illinois had the right to establish the *status* of its own citizens it had no right to impose its policy beyond the limits of its own territory, saying:

"All the claim which such an adjudication has to foreign "recognition, in my opinion, rests on the ground of comity. "It is not a judgment such as is entitled to recognition and "enforcement in other States by force of the Act of Congress "and the Constitution of the United States."

In *Fowler vs. Fowler*, 42 *N. J. Eq.*, 152, it appeared that in 1882 the wife removed from the State of New Jersey to Michigan, where, after a residence of a year, she obtained a divorce from her husband. He was served by publication. The wife returned to New Jersey, remarried and immediately returned to Michigan. On application of the husband for a divorce in New Jersey it was held the Michigan decree was a nullity as to him.

Michigan Decisions.

The attention of this Court has already been called to the case of the *People vs. Dowell*, 25 *Mich.*, 247, where a husband was indicted and convicted for bigamy, in making a second marriage after his first wife had obtained an Indiana divorce. It appeared the first wife lived in Michigan, although claiming a residence in Indiana, where she took proceedings, and obtained a decree divorcing her from her husband. It further appeared that the husband appeared in the Indiana action, and admitted the residence of the wife to be in Indiana, and yet the Michigan Supreme Court held the Indiana divorce absolutely void and no defense to the prosecution of the husband for bigamy in making a subsequent marriage.

The case was followed by the later decision, *Wright vs. Wright*, 24 *Mich.*, 180, upon almost identical facts, saving that there was no appearance of the defendant in the Indiana proceedings.

The Court held "*the Indiana Court to have been wholly without jurisdiction and the divorce, therefore, invalid.*"

Wisconsin.

In *Cook vs. Cook*, 56 *Wisconsin*, 195, the parties were married in New York, and went to Wisconsin to live. In 1875 the husband left the State of Wisconsin and went to Michigan, and in

1880 began an action for divorce in Michigan, alleging his wife had deserted him. His wife was not a resident of Michigan, but continued to reside in Wisconsin. Service was made on the wife by publication according to the laws of Michigan; a divorce was granted.

The Wisconsin Court held such a decree no bar to the action of the wife in Wisconsin. The opinion treats the marriage relation as a *status*, and while conceding each State has the power to absolutely fix and regulate such status as to each and all of its own citizens, asserts that "it logically follows that no one "State has the power to fix, regulate or control such status as "to citizens of any other State."

To the same effect is the case of *Shafer vs. Bushnell*, 24 *Wis.*, 376.

Minnesota.

The same rule prevails in Minnesota.

State vs. Armington, 25 *Minn.*, 29.

Illinois.

In Illinois it is held that a divorce granted by a Court of another State to a party who went to such State for the purpose of procuring such divorce and of returning after it has been granted, when granted and procured upon a substituted service of process, is void for want of jurisdiction.

Dunham vs. Dunham, 162 *Ill.*, 52.

Other cases hold that in making jurisdiction appear by fraud will defeat a divorce thus obtained.

Edson vs. Edson, 120 *Mass.*, 590.
Scanlon vs. Scanlon, 41 *Ill.*, 449.

English Doctrine.

The English Courts lay down the doctrine that the first essential for the validity of a foreign decree of divorce is that it should be pronounced by a court of competent jurisdiction between parties who are *bona fide* subjects of that jurisprudence.

No nation will admit that its domiciled subjects may lawfully resort to another country for the purposes of evading the laws under which they live. When they return to the country of their domicile, bringing back a foreign judgment so obtained, the

tribunals of the domicile are entitled to reject it, and bound to reject it if it be an evasion of their own laws and policy.

See opinion of Lord Westbury in

Shaw vs. Gould, *L. R. H. L., Cas.*, 55, 18 *L. T. N. S.* 833, decided in 1868.
Dolphin vs. Robins, 7 *H. L. Cas.*, 390.
Pitt vs. Pitt, 12 *Weekly Rep.*, 1089.

In *Rex vs. Lolley*, *Russ & R. C. C.*, 237, 2 *Clark & F.*, 567, it was held that an English marriage could not be dissolved by any foreign court on grounds for which it could not be dissolved in England. Lolley and wife had been married in England and were domiciled English subjects. A divorce was obtained in Scotland, where they were temporarily residing, and Lolley returned to England and remarried in England. He was convicted of bigamy.

In *McCarthy vs. De Caix*, 2 *Russ & M.*, 614, 2 *Clark & F.*, 568. A Dane and an English woman had been married in England, and then returned to Denmark, in which country they were divorced, and it was held the divorce was invalid in England.

To the same effect was the case of *Conway vs. Beasley*, 5 *Eng. Eccl. Rep.*, 242.

In *Shaw vs. Att'y Gen'l*, *L. R.*, 2 *Prob. Div.*, 156, a woman whose domicile was originally English, and who married in England, came to Iowa, where she resided two and a half years, when she obtained a divorce from her husband, who had never abandoned his domicile in England. The Iowa divorce was held invalid in England.

Pennsylvania decree obtained by fraud

The decree of divorce obtained by Mr. Bell in Pennsylvania was obtained by fraud in an attempt to evade the laws of the State of New York, and making a Pennsylvania residence to appear, when, in fact, he continued a resident of New York. (See findings of Court previously cited.)

Under such circumstances it has been repeatedly held that neither principles of comity nor the provisions of the constitution required the recognition of the validity of a judgment so obtained.

Sewell vs. Sewell, 122 *Mass.*, 156.
Edson vs. Edson, 120 *Mass.*, 590.
Kerr vs. Kerr, 41 *N. Y.*, 274.
Hoffman vs. Hoffman, 46 *N. Y.*, 30.
Dunham vs. Dunham, 162 *Ill.*, 52.
Scanlon vs. Scanlon, 41 *Ill.*, 449.

Some general observations.

From the decisions cited some general deductions may be made.

It may be safely said that the constitution did not mean to confer a new power or jurisdiction, but simply to regulate the effect of the acknowledged jurisdiction over persons and things within the State.

That where neither the husband nor the wife are *bona fide* residents of a State it has been without exception held that no jurisdiction can be obtained to grant a divorce dissolving the marriage between them, and such a decree is absolutely void.

That in Massachusetts, Vermont, New York, Pennsylvania, New Jersey, Michigan, Wisconsin and Minnesota at least, if not in many other States, the Courts hold with substantial unanimity that a divorce granted by another State is absolutely void where it appears that the defendant was not at the time a resident of such State, and was never personally served with process within its territorial limits, and never appeared in the action although the plaintiff in such an action may have been a *bona fide* resident of the State.

That in cases in those States where a substituted service of process has been held sufficient to give jurisdiction the defendant has been either actually or constructively a resident of the State granting the divorce, and by reason of such actual or constructive domicile owing allegiance to the laws of that State and its provisions touching substituted service. Within the bounds stated, the Courts kept within sound and safe principles of jurisprudence. Substituted in place of personal service of process cannot, however, be given greater force or made applicable to a wider class of cases for the purpose of sustaining the plea of jurisdiction without danger to the welfare of our people, or without violating the underlying principles of jurisprudence.

The argument of "*status*," so commonly advanced to sustain divorces granted without personal service, wholly fails unless both parties happen to be residents of the State assuming jurisdiction. It fails because no State has a right to determine the status of citizens of another State. It should fail also for the reason that marriage is more than a mere "*status*." Marriage also involves contract rights, obligations and responsibilities, and it has been held over and over again that substituted service is unavailing in proceedings to establish or destroy personal liability.

Pennoyer vs. Neff, 95 *U. S.*, 714.
People vs. Baker, 76 *N. Y.*, 78.

A decree dissolving a marriage operates of necessity *in personam* if it is to have any validity at all. The wife, by virtue of the marriage, has the right of maintenance and support by her husband. She is entitled to dower in his lands, and if

the husband dies, intestate to a share in the distribution of his personal estate. In addition to her property rights, the wife is entitled to the society and protection of her husband, to participate in the fostering care and enjoyment of their children, and to enjoy many other rights springing from the marriage relation. How, then, can these rights be destroyed, wiped out of existence by a decree of a Court without the decree operating *in personam* upon her. Is it possible that where a Court of another State may not render a personal judgment on a money demand against one not personally served with process within its jurisdiction it may destroy property and personal rights springing from the marriage contract simply, by a substituted service? Are dollars and cents more sacred than the marriage relation which lies at the very foundation of society and civilization? There can be no sympathy with a logic which leads to such absurd conclusions.

These considerations we respectfully submit are a complete answer to the argument of "*status*" as a plea for the validity of exparte divorces procured in other States.

If the framers of our constitution had given to Congress the power to pass uniform laws regulating the granting of divorces, and conferred upon the United States Courts original jurisdiction to entertain suits for that purpose, the confusion and scandal which disgraces so much of State legislation and judicial decision would never exist. It remains, however, for this Court, by its considerate judgment, to settle forever many of the vexed questions which have disturbed eminent jurists. No more propitious time exists than the present, when public conscience has been aroused against the too common practice of seeking in other States relief from marriage ties and obligations for causes which the sober judgment and wise policy of the State of the real domicile of the parties have declared insufficient to warrant a divorce.

The exception taken by the counsel for Mr. Bell, and appearing on pages 76 and 77 of the record, was not well taken.

The counsel for the plaintiff in error has not, in his assignment of errors, specified the exclusion of Mr. Bell's evidence as a ground of reversal. Under subdivision 4 of Rule 21 the counsel cannot be heard upon this question.

None of the various Courts having this case under consideration have been asked to reverse the judgment upon the refusal of the Referee to permit Mr. Bell to testify as offered.

In order, however, that the Court may understand how the ruling came to be made, we briefly state:

The evidence had been closed, counsel for both parties had summed up the case, and were ready to submit it to the Referee for his decision, when counsel for Mr. Bell asked permission to

reopen the defendant's case for the purpose of calling Mr. Bel as a witness, and "to show by him that he did not read the "petition for the probate of his mother's will, signed by him and "his sister" . . . "and that he did not know that it contained "a reference to his own residence," referring, of course, to the petition found on pages 25 and 26 of the record in which Mr Bell had given his residence as Buffalo, N. Y., and verified the same, and later in the oath of office as executor swore that he was a resident of the City of Buffalo in the County of Erie; and without which oath under the Statutes of New York he would have not have been entitled to letters testamentary on his mother's will.

The counsel for Mrs. Bell objected to the defendant reopening his case, on the ground it was too late to do so, and also "on the "ground that under the provisions of the code the defendant "would not be a competent witness."

The Referee refused to reopen the case because he did not think the testimony of any importance, and also "*on the ground that the testimony included in the offer is incompetent.*"

The Court will note that the defendant's offer was not to prove generally that Mr. Bell's residence was in fact in Pennsylvania at the time in question, but to explain his sworn statement to the contrary. It was not proposed to call any witness but Mr Bell, the defendant, in the action, and that the objection of plaintiff's counsel was to Mr. Bell's own competency as a witness on the point. This objection to his competency was well taken, and the Referee so ruled.

Section 831 of the New York Code of Civil Procedure provides: "When Husband and Wife not Competent Witnesses— "when Competent.—A husband or a wife is not competent to "testify against the other upon the trial of an action, or the "hearing upon the merits of a special proceeding founded upon "an allegation of adultery, except to prove the marriage, or "disprove the allegation of adultery." . . . . It will thus be seen that the ruling of the Referee was right, and Mr. Bell could not testify as a witness to the matters in question. The United States Supreme Court will take judicial notice of the laws and judicial decisions of the several States.

Cheever vs. Wilson, 76 *U. S.*, 121.
Pennington vs. Gibson, 57 *U. S.*, 80.

The judgment of the New York Court should be affirmed and the Writ of Error dismissed.

CHAS. B. WHEELER,

Counsel and Attorney for the Defendant in Error,
117 Erie County Savings Bank, Buffalo, N. Y.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 265.

FREDERICK A. BELL, PLAINTIFF IN ERROR,

vs.

MARY G. BELL, DEFENDANT IN ERROR.

SUPPLEMENTARY POINTS.

We are advised that Counsel for the plaintiff in error will contend on the argument of this case that, inasmuch as the Pennsylvania Court entertained Mr. Bell's application for divorce upon his representation that he was a citizen of that State, and has awarded to him a divorce, that the New York Courts and this Court are conclusively bound to assume that Mr. Bell was in fact, a resident of Pennsylvania, and cannot inquire whether in truth and in fact he was such resident or not.

This contention is not the law, and the defendant in error submits some supplementary points in answer, although the cases already cited fully dispose of the proposition.

A regrouping of the cases as they bear on this particular point may be, however, of assistance to this Court. We, therefore, make the following points:

FIRST.

The recitals of facts in a decree may be contradicted as to the facts necessary to give the Court jurisdiction; and if it be shown that such facts did not exist, the record will be a nullity, notwithstanding it may recite that they did exist.

Thompson v. Whitman, 85 *U. S.*, 457.
Knowles v. Gaslight and Coke Co., 86 *U. S.*, 61.

The principle has been applied repeatedly to cases of divorce, and it has been held over and over that it is competent to show

that a decree of divorce granted by a Court of another State, although appearing on its face to be valid is in fact void, because the libellant fraudulently, and in evasion of the law of his domicile, procured that Court to exercise jurisdiction over the case. That recital of the residence of a libellant in a decree of divorce obtained on substituted service sufficient to give the Court of such state apparent jurisdiction entitle it to no faith and credit, if as matter of fact the jurisdictional facts do not exist.

Sewell v. Sewell, 122 *Mass.*, 156 (*s. c.* 23 *Amer. Rep.*, 299).
Shannon v. Shannon, 4 *Allen* (*Mass.*), 134.
Leith v. Leith, 39 *N. H.*, 20.
Gregory v. Gregory, 78 *Me.* 187 (*s. c.* 57 *Amer. Rep.*, 792).
Hoffman v. Hoffman, 46 *N. Y.*, 30.
Cross v. Cross, 108 *N. Y.*, 628.
Kerr v. Kerr, 41 *N. Y.*, 272.
People v. Dowell, 25 *Mich.*, 247 (*s. c.* 22 *Amer. Rep.*, 260).
Reed v. Reed, 52 *Mich.*, 121.
Chaney v. Bryan, 83 *Tenn.*, 589.

One Court cannot by a simple *ipse dixit* compel other Courts to yield jurisdiction. If a recital that Mr. Bell was a resident of Pennsylvania is to be conclusive, then a recital that Mrs. Bell was also a resident of Pennsylvania would be also conclusive, or any other alleged fact the Court might see fit to set out irrespective of the fact and the truth.

The counsel for Mr. Bell cited in the Courts below, as sustaining his contention that we cannot question Mr. Bell's residence, the case of *Kinnier v. Kinnier*, 45 *N. Y.*, 535. That case, however, was one where the defendant appeared in the action, and by answer submitted herself to the jurisdiction of the Court, and litigated the question of residence of the plaintiff, and the Court decided adversely to the contestion, and when that decree was attacked collectively, the Court properly held that that finding, where all parties were subject to the jurisdiction of the Court, was final. A very different question than that presented where no appearance is made.

We also beg to call this Court's attention to some additional authorities on the following proposition, already discussed on pages 10 to 13 of the principal brief, to wit:

SECOND.

Where a resident of a State procures a divorce in another State by default upon constructive service, such divorce is void.

Van Vliet on Collateral Attack, §649.
Sewell v. Sewell, 122 *Mass.*, 156 (23 *Am. Rep.*, 299).

Hanover v. Turner, 14 *Mass.*, 227 (*s. c.* 7 *Am. Dec.*, 203).
Adams v. Adams, 154 *Mass.*, 297.
Hoffman v. Hoffman, 46 *N. Y.*, 30.
Gregory v. Gregory, 78 *Me.*, 187 (*s. c.* 57 *Am. Rep.*, 792).
Wright v. Wright, 24 *Mich.*, 180.
Reed v. Reed, 52 *Mich.*, 121.
Leith v. Leith, 39 *N. H.*, 20.
Letowich v. Letowich, 19 *Kans.*, 451 (27 *Am. Rep.*, 145).
Watkins v. Watkins, 125 *Ind.*, 163.
Neff v. Beauchamp, 74 *Iowa*, 92.
Gellys v. Gellys, 71 *Tenn.*, 260 (*s. c.* 31 *Am. Rep.*, 637).
Smith v. Maxwell, 19 *Neb.*, 706.

There are no cases to the contrary.

In this connection we call this Court's attention to the opinion of the Referee, who tried the case, in which he said:

"The defendant claimed a residence in Pennsylvania, but "such residence could have been but nominal, as he at the same "time claimed to be a resident of this State, in proceedings in a "Surrogate's Court here. No evidence was offered to show that "the defendant actually changed his domicile from this State "to that of Pennsylvania." Page 10 of Record.

Also to the opinion of Mr. Justice Follett, who delivered the opinion of the Appellate Division on appeal to that Court, in which he says: "The evidence is ample to sustain the finding of "the Referee that the defendant in this action was not a resident "or citizen of Pennsylvania, but went there solely for the pur-"pose of instituting and prosecuting his suit for a divorce." (Record, page 81.)

The writ should be dismissed.

CHAS. B. WHEELER,
Counsel for Defendant in Error.
BUFFALO, N. Y.

No. 265. 39
Reply Br. of Wheeler for D.
Office Supreme Court U.S.
FILED
APR 19 1900
JAMES H. McKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES.

O. T. No. 265.

Filed April 19, 1900.

FREDERICK A. BELL, PLAINTIFF IN ERROR,

versus

MARY G. BELL, DEFENDANT IN ERROR.

BRIEF FOR DEFENDANT IN ERROR IN REPLY TO BRIEF OF COUNSEL FOR PLAINTIFF IN ERROR.

The counsel for the defendant in error begs to submit the following for the consideration of this Court in reply to matter set forth in the brief filed for the plaintiff in error; although most of the matter has been already set out in points for defendant previously filed.

FIRST.

On pages 6, 7, 8, 9 and 10 of the brief of opposing counsel, he has made an effort to show that the *exparte* divorce obtained by Mr. Bell in Pennsylvania was sustained by the merits of the case, and that Mrs. Bell did in fact desert Mr. Bell.

What evidence was given before the examiner in the Pennsylvania proceedings does not appear. For some reason counsel for Mr. Bell did not see fit to introduce with the certified copy of the Pennsylvania decree the evidence taken in that action. As a complete answer to the counsel's contention, we beg to say that the circumstances attending the separation of Mr. and Mrs. Bell were not in issue in this action. They only came up incidentally and from the evidence given the Referee found:

"In August, 1882, the plaintiff went to Bloomington, Ill., *on "a visit to her mother.* In her absence the defendant packed "up her wearing apparel and other property in trunks, and "had them removed to the stable preparatory to sending them to "the plaintiff at Bloomington. In September the plaintiff, "accompanied by her mother, returned to the defendant's house, "stayed three or four days and then left, accompanied by her "mother, for Bloomington, Ill."

See Referee's finding IV. on page 7 of Record.

There was no evidence to dispute these facts. Mr. Bell deliberately put his wife out of his house. He had not the courage or manhood to arrange for a mutual and amiable separation, but when his wife was away on a visit to her mother, put all her things out of his house into the stable, including even her piano. (See Record, page 59.)

When Mrs. Bell learned of this conduct on the part of her husband she at once returned with her mother, and was greeted by Maggie Cashian, the servant, with the exclamation, "Mrs. "Bell, we are glad you have come back before your things are "gone." (Page 59.)

This Maggie Cashian testified, she went to Pennsylvania to testify for Mr. Bell in his Pennsylvania proceeding. She says: I was sworn and testified "at Mr. Bell's request. Mr. Bell was "present; Mr. Seymour was present; they asked me nothing "about packing up Mrs. Bell's things." (Page 59.)

No, indeed! Mr. Bell and his counsel were very careful to conceal the real circumstances, showing that when Mrs. Bell finally left her husband's house, she had heartlessly and with insult practically been put out of his home.

Finding that her husband had repudiated her, what did Mrs. Bell do? She endeavored to see Mr. Bell. She sought an explanation of his conduct. He had none to give; but slunk out of the house the next morning with a guilty conscience, afraid to face his injured wife. (Page 59.)

Having been practically ejected from her husband's home, having been denied any satisfaction, Mrs. Bell concluded to return with her mother to Bloomington. She told her servants she was going. She is a lady. Of course, they knew she could not return to her husband's roof after he had done what he did. And yet the counsel for the plaintiff in error has the hardihood to assert that Mrs. Bell deserted her husband.

Let us look a bit further. It seems that Mrs. Bell wrote Mr. Bell a number of letters. These letters are not in evidence, because they were in Mr. Bell's possession, and he did not see fit to produce them. He acknowledged, however, that they had been received, and something of their contents may be inferred from one of Mr. Bell's letters to her. In his letter of July 5, 1891, Mr. Bell said:

"Mary, I have yours of the first inst., and think, perhaps, in "justice to you, as well as myself, I should reply. I have also "received the several letters you have heretofore written me, "but have not answered them, because I could see no good that "could come to either of us by so doing; with me it only brings "up unpleasant memories of the past and *associations that I "have striven to forget ever existed, and which, Mary, can "never be renewed. My love for you is a thing of the past, "dead and buried, and can never be revived*," etc. (Page 28.)

Again, two years later in a letter written in July, 1893, Mr. Bell tells his wife, "Of course, Mary, by this time any hopes

"of any reconciliation between us, as our being any more to "each other than we are at present, must by you have been "abandoned." (Page 29.)

He put her out of his home, and writes her twice that he will not listen to anything looking toward a reunited married life; asks her to get a divorce from him, and, because she does not accede to that demand, files a bill against his wife for alleged desertion. On the hearing in the Pennsylvania Court he suppresses the essential facts, and then asserts that this *ex parte* Pennsylvania decree was granted on the merits.

The evidence is all the other way. The findings of the Referee are all the other way.

It is true that all this has nothing to do with the question now before this Court, but counsel for Mrs. Bell could not permit the statements made in the brief of counsel for Mr. Bell on these matters to go uncontradicted.

SECOND.

As to Mr. Bell's domicile.

Counsel for the plaintiff in error devotes not a small portion of his brief in an effort to avoid the force and effect of the Referee's finding that Mr. Bell was not a *bona fide resident* of Pennsylvania, as set out in his finding of fact VIII., page 8.

I regret to observe that counsel for Mr. Bell without any justification has even seen fit to make a personal attack on the Referee who was selected by himself, and whose standing and integrity as an upright, incorruptible and distinguished lawyer has never been questioned.

He complains that he, counsel, did not know what the petition of Mr. Bell, filed in the Surrogate's Court, contained. That he did not discover what his client and his client's sister, a most estimable lady, had sworn to, as disclosed by that document. If he failed to read the papers offered in evidence and to familiarize himself into their contents, he has but himself to criticise. It was his duty to have examined them.

Certainly, counsel for Mrs. Bell did not deceive him. When these papers were introduced in evidence, Mrs. Bell had the case. Her counsel was making out for her the charge of adultery against Mr. Bell, and also giving evidence to aid and assist the referee in determining the amount of alimony to be allowed.

The Pennsylvania decree was purely a matter of defense. It was pleaded as such. Mrs. Bell was not required to anticipate this defense by giving any evidence in avoidance of that decree, or to show it was without jurisdiction and void, until after the defendant himself had attempted to use it as a defense.

When this decree was introduced it appeared to have been an *exparte* proceeding, obtained on constructive service against

a person who never had been a resident of Pennsylvania. The evidence already introduced before the Referee showed that Mr. Bell had been prior to filing his libel in Pennsylvania a resident of Buffalo. There was no evidence offered that he had ever changed his residence, but, on the contrary, we had Mr. Bell's own sworn statement, and that of his sister, in a paper drawn and prepared by his own lawyer, that at the very time he was conducting his Pennsylvania proceedings he was actually, and in fact, a resident of the City of Buffalo, in the State of New York.

It was not necessary for Mrs. Bell to introduce any further testimony to warrant the Referee in finding that Mr. Bell's pretended residence in Pennsylvania was simply a pretense. Counsel for Mr. Bell has seen fit to make statements on that subject outside the record. This Court will not pay any attention to such representations. If there had been any attempt to bolster up this Pennsylvania decree, by showing a Pennsylvania residence, every one in the City of Buffalo knows how disastrously futile such an effort would have proved.

But being confronted with these sworn statements of Mr. Bell, of his most excellent and respectable sister, in a paper prepared by his own lawyer, who never suspected any change in domicile, how does the counsel propose to meet it? Was it by calling witnesses to show that Mr. Bell had in truth and in fact changed his residence? No! No offer of that kind was made. Whereas the burden of proof upon the party who asserts the change to establish it,

Depuy v. Wurtz, 53 *N. Y.*, 556–561.

Counsel did not propose to call any one but Mr. Bell himself. He simply offered to show by Mr. Bell that when he signed and swore to the paper he did not know that it contained a statement as to his residence.

That was the objection of counsel for Mrs. Bell to the evidence offered. First, that counsel ought not to be permitted to open his case after he had summed it up, and second, "*that under the provisions of the code, defendant would not be a competent witness.*" (Page 77.)

Counsel for Mr. Bell knew perfectly well that the objection raised was absolutely fatal to his offer.

The Referee could make but one ruling, and that was to refuse counsel the right to call Mr. Bell for any such purpose. He did rule accordingly. That there may be no misunderstanding as to the provisions of the section of the Code of Civil Procedure referred to, we quote it in full.

"Section 831. When husband and wife not competent witnesses. When competent.

"A husband or a wife is not competent to testify against the "other upon the trial of an action, or the hearing upon the "merits of a special proceeding founded upon an allegation of

"adultery, except to prove the marriage, or disprove the allega-
"tion of adultery. A husband or wife shall not be compelled,
"or, without consent of the other, if living, allowed, to disclose
"a confidential communication, made by one to the other, dur-
"ing marriage. In an action for criminal conversation, the
"plaintiff's wife is not a competent witness for the plaintiff,
"but she is a competent witness for the defendant as to any
"matter in controversy; except that she cannot, without the
"plaintiff's consent, disclose any confidential communication
"had or made between herself and the plaintiff."

Counsel for Mr. Bell did not ask permission to introduce any proof or evidence by any other witness, and the Referee could not possibly make any other finding on the evidence before him than he did.

The Referee in his opinion said: "The defendant claimed a "residence in Pennsylvania, but such residence could have "been but nominal, as he at the same time claimed to be a resi-"dent of this State in proceedings in a Surrogate's Court here. "No evidence was offered to show that the defendant actually "changed his domicile from this State to that of Pennsylvania." Page 10 of Record.

On appeal to the Appellate Division of the New York Supreme Court, the Court there said: "The evidence is ample to sustain "the finding of the Referee that the defendant in this action "was not a resident or citizen of Pennsylvania, but was taken "solely for the purpose of instituting and prosecuting his suit "for divorce." (Record, page 81.)

The evidence supported the finding, and the *United States Supreme Court must accept and cannot reverse the findings of fact of the Trial Court.*

St. Louis v. Rutz, 138 *U. S.*, 226.
Ruckle v. Burnham, 153 *U. S.*, 216.
Laing v. Rigney, 160 *U. S.*, 536.

Not only is this true, but the counsel for the opposite side has never asked a reversal of the judgment on the ground of the rejection of the offer either in the Appellate Division or in the Court of Appeals. His briefs submitted to those Courts show this statement to be true, but in addition he expressly stated in open Court he did not ask any reversal on the ground of any supposed error in the ruling by the Referee in rejecting his offer.

Counsel for the plaintiff in error intimates that Mr. Bell's *domicile* was in Pennsylvania, whereas his *residence* was in Buffalo, and that, therefore, while Mr. Bell, in fact, lived and resided in the City of Buffalo, he had acquired a *domicile* in Pennsylvania for the purposes of a divorce. In fact, he says, in his brief, he advised him to do it. The record does not disclose any such thing, but it appears that in counsel's mind that state-

ment meets the case, although we submit that counsel's own statement is absolutely fatal to his client's cause.

The word "*residence*," however, as used in the Code of Civil Procedure of the State of New York and in the Referee's decisions, simply means domicile.

Whatever meaning they may have in other States, or in other connections, the meaning of the word "*resident*" has been construed and defined by judicial decision in New York State.

The New York Court of Appeal defining this word says:

"*In legal phraseology residence is synonymous with inhabi-*
"*tance or domicile. And it is in that sense that the term resi-*
"*dent is used in the provisions of the Code referred to, and*
"*persons having that relation to this State are its citizens and*
"*residents.*"

DeMeli v. DeMeli, 120 *N. Y.*, 491.
Hunt v. Hunt, 72 *N. Y.*, 240.

The decree now under consideration is a New York decree, and the meaning of words and terms therein used must be determined by the accepted definition in that State, and it was just in that sense that the Referee used the term resident, when he found as matter of fact that Mr. Bell was not a *bona fide resident* of Pennsylvania.

A perusal of his opinion. He says: "*While domiciled here the*
"*defendant brought an action in a Court of Pennsylvania for*
"*a divorce from the plaintiff.*" "The defendant claimed a resi-
"dence in Pennsylvania, but such residence could have been but
"nominal, as he at the same time claimed to be a resident of
"this State in proceedings in a Surrogate's Court here. No evi-
"dence was offered to show that the defendant actually changed
"his domicile from this State to that of Pennsylvania."

Showing the Referee used the term *residence* and *domicile* interchangeably as defined in

De Meli v. De Meli, 120 *N. Y.*, 491.

THIRD.

Counsel for Mr. Bell attacks Mrs. Bell's residence or domicile. (See his brief, pages 35 and 36.)

Just why he sees fit to do this, I do not know. We have seen Mrs. Bell was forced to leave her husband's house; that she might have acquired a valid legal residence or domicile in Illinois, if she had chosen to have done so, no one can dispute. It was for her to elect whether she would change her legal resi-

dence or not. And if she saw fit to still treat and regard herself a resident of New York under the circumstances of the case it was her right and her privilege. She was not forced to surrender her New York domicile, and she never did.

The testimony is, that after the separation, she, Mrs. Bell, always claimed Buffalo as her home, and in legal documents she executed invariably described herself as a resident of Buffalo. (Pages 15 and 16.) She hoped for a reunited married life. Her letters to her husband were written to that end. She was urged to institute proceedings for divorce, and refused.

At a later day she returned to New York, where she has lived ever since to this day.

The Referee properly found she was a resident of the State of New York.

FOURTH.

Counsel for the plaintiff in error asserts that there is no finding of the Referee of any fraud in procuring the Pennsylvania judgment. (See page 34 of his points.)

Let us see. Mr. Bell asserted in his petition before the Pennsylvania Court that he was a resident of that State. The Referee finds he was not.

He based his action in that State on the allegation of desertion. The Referee finds facts showing the charge absolutely false. Mr. Bell is found guilty of adultery at and prior to the very time when he filed his libel for a divorce in Pennsylvania. Being guilty of this offense he had no standing by right in the Pennsylvania Courts.

Each and every one of these facts show a deliberate fraud on the Pennsylvania Courts, as well as upon Mrs. Bell and her rights. Mrs. Bell sues for a divorce, the defendant sets up his Pennsylvania decree. The Court finds facts not only showing an utter lack of jurisdiction in the Pennsylvania Court but fraud and imposition on it as well, and the New York Court holds the Pennsylvania judgment void. It grants the prayer of Mrs. Bell for divorce. It was required to do no more.

FIFTH.

An analysis of the various cases cited by the counsel for the plaintiff in error in his brief shows, that while they are not in entire harmony with the better considered decisions of other States yet can give little aid or assistance in upholding the position for which he contends in the case at bar.

We take the liberty of briefly summarizing most of these cases.

Gregory v. Gregory, 78 *Me.*, 187.

Was a case where a husband obtained a divorce in Illinois. The Illinois Court had found him a resident of that State, but his residence was disputed, and in an action in Maine, for dower, the Trial Court expressly submitted to the jury the question whether the husband was, or was not, at the time of taking his Illinois proceeding, such resident, declining to be bound by the recitals of the Illinois decree. On appeal it was held this ruling was entirely proper.

Harding v. Alden, 78 *Me.*, 187.

In this case the Court of Maine sustained a divorce obtained in Rhode Island by a wife against her husband, who had deserted her and committed adultery, although there was nothing but a substituted service on the husband.

The case, however, recognized the distinction made in Massachusetts, that "if a judgment be rendered in a State against a man not within that State, nor bound by its laws, nor amenable to its jurisdiction, and that judgment should be produced in any other State against the defendant, it would be entitled to no credit."

Bissell v. Briggs, 9 *Mass.*, 416.

Shaw v. Shaw, 98 *Mass.*, 158,

Simply construed a Massachusetts statute declaring that "no divorce can be granted for any cause occurring in any other State or country unless before such cause the parties had lived together as husband and wife in this State, and one of them lived in this State when the cause occurred," and held that a wife, under this statute, might file her bill against her husband, when they were married in Massachusetts, started for Colorado, but separated in Pennsylvania, owing to the husband's cruelty, and the wife returned to Massachusetts. The force and effect of a divorce of a sister State was not under consideration.

Hood v. Hood, 110 *Mass.*, 463,

Simply defined the force and effect of a previous Massachusetts judgment between the claimant and her husband, that case being

Hood v. Hood, 11 *Allen*, 196,

Where parties removed from Massachussets to Illinois, and resided there some years, and there the wife deserted her husband and returned to Massachusetts without cause. Her legal

domicile therefore continued in Illinois notwithstanding her desertion, and Illinois Courts, therefore, had jurisdiction of both parties, and it was held on that theory that an Illinois divorce obtained by the husband was valid in Massachusetts.

Burlen v. Shannon, 115 *Mass.*, 447.

The rule laid down in *Hood v. Hood*, 11 *Allen*, 196, was followed, and it was held that where a husband, whose wife is living apart from him without justifiable cause, removes from Massachusetts to another State and acquires a domicile there *without the purpose of obtaining a divorce*, and afterwards obtains a divorce in that State according to the laws thereof upon a substituted service, the divorce is valid, upon the theory of the identity of the domicile of the wife with that of the husband, unless she separates from him for justifiable cause.

Locker v. Gerald, 157 *Mass.*, 43.

The same rule is laid down as in the previous case of *Burlen v. Shannon*.

Ditson v. Ditson, 4 *R. I.*, 87.

Held that the Courts of Rhode Island had jurisdiction to grant divorce to a wife on her petition in its Courts, she being *a bona fide resident* of that State, although the marriage took place elsewhere, and the desertion took place in another State.

At the same time the Court said :

"It is a well-settled principle of *general law* upon this subject, that the tribunals of a country have no jurisdiction over a cause of divorce, wherever the offense may have occurred, if neither of the parties has an actual *bona fide* domicile within its territory."

Tolen v. Tolen, 2 *Black*, *fol.* 407.

Parties were married in Kentucky. The husband deserted his wife and lived in adultery with another woman. The wife removed to Indiana and filed her bill for divorce in that State. It was held the Court had jurisdiction although the husband was a non-resident. The same Court, however, says :

"In the States of New York and Massachusetts it has been "decided, that where one or both of the parties remove into "another State for the purpose of procuring a divorce contrary "to the laws of their own State, without absolute change of "domicile, and the Court pronouncing such decree has no juris-"diction, having been imposed on by fraud and collusion. "These decisions, we think, are good law."

Thurston v. Thurston, 58 *Minn.*, 279.

A husband left his wife in Minnesota and went to Washington, where he became an actual, *bona fide resident*. She then filed a bill for divorce and was granted a decree, although he had not in fact lived in that State the statutory time required before filing his bill.

The wife filed her bill for decree against him in Minnesota, but the Minnesota Court held that inasmuch as the husband acquired a *bona fide* residence in Minnesota the decree was valid so far as the marriage status was concerned, that the marriage was dissolved, but that nevertheless the wife might maintain and recover alimony from her husband.

Thomas v. King, 95 *Tenn.*, 64.

A divorce granted in Illinois upon a substituted service was sustained on a collateral proceeding, it appearing to the satisfaction of the Tennesee Court, that the petitioner in the Illinois action was in fact a *bona fide resident* of Illinois.

The case fully sustains the doctrine that the question, whether a party was a *bona fide resident* of a State so as to give it jurisdiction, is a subject of inquiry when a decree obtained by him is set up as a defense or bar to a proceeding.

The case does not, however, follow the rule laid down in New York, Massachusetts or other States as to the effect of a judgment of divorce procured on a substituted service.

Rodgers v. Rodgers, 56 *Kans.*, 483.

Husband left his wife, went to West Virginia and there obtained a divorce from her on ground of alleged desertion. In an action in Kansas by the wife against the husband for divorce, the Court held the West Virginia decree valid, but at the same time also held that she might maintain an action for alimony, and the custody of children, etc.

Gould v. Crow, 57 *Mo.*, 200.

Was an action for recovery of dower in lands in Missouri.

The husband had obtained an Indiana divorce from his wife on the ground of her desertion of him in the State of Indiana. The record so showed, but the Trial Court excluded the record, as there had been no personal service on the wife. The Missouri Court held this error, the record having shown that attorneys appeared for the wife in the Indiana proceeding.

The Court, however, said :

"Of course, if Jeffries went to Indiana expressly to obtain "the divorce, that would render it fraudulent, and void as to "the wife, but that question is not before us."

Van Orsdal v. Van Orsdal, 67 *Iowa*, 36.

Iowa Court recognized as valid a Nebraska divorce obtained upon substituted service, where it appeared the parties, although married in Iowa, went to Nebraska to live, the wife subsequently moving to Iowa. It will be noted that there was nothing in this case to show that the separation was for justifiable cause, and for all that appears the domicile of the husband was the legal domicile of the wife.

Re James, 99 *Cal.*, 374.

The question was as to the validity of a Missouri divorce obtained by a husband against his wife, who remained in New York, and where there was only a substituted service, and it was held such a divorce was valid.

The Court, however, said, "We agree with the appellant that it is competent to collaterally impeach the record of a judgment rendered in another State by extrensic evidence, showing that the facts necessary to give the Court pronouncing it jurisdiction to proceed did not exist, and this is true although the record sought to be impeached may recite the existence of such jurisdictional facts."

In *Rigney v. Rigney*, 127 *N. Y.*, reversed by the United States Supreme Court under title of,

Laing v. Rigney, 160 *U. S.*, 531.

It appeared that Rigney had his legal residence in New Jersey but actually lived in New York. His wife resided in New Jersey and began action for a divorce against him in New Jersey on the ground of adultery. Rigney appeared in the action and filed an answer to the bill denying the charges of adultery. Subsequently, his wife filed a supplemental bill charging adultery by Rigney at times subsequent to the filing of the original bill. An order was made directing defendant to plead to the supplemental bill and directing service of the supplemental bill and order on him personally, which service was made on him personally in New York City. Rigney did not answer this supplemental bill whereupon the New Jersey Court proceeded to take proof and granted the divorce as prayed for with an allowance for costs and alimony.

In January, 1888, Rigney appeared by his solicitor and filed his answer to the original bill and applied for and obtained from the Chancellor an amendment of the decree of June 11, 1887, reciting in substance that the decree of divorce was granted for the adulteries charged in the supplemental bill. This action was subsequently brought in New York to enforce the provisions of the New Jersey decree for the payment of alimony and costs.

The defendant Rigney in his answer in that action claimed that the New Jersey Court never acquired jurisdiction over him to make any personal decree against him on the supplemental bill, on the alleged ground that jurisdiction could not be acquired without service of a new subpœna in New Jersey under the law and practice of New Jersey, and upon the trial called the Clerk of the New Jersey Court as an expert to show that the issuing and service of such supplemental subpœna was necessary, although he admitted on his cross-examination that there was no statute of New Jersey in terms requiring the issuing of a subpœna on any supplemental bill, nor was he able to specify any New Jersey statute requiring such process on an supplemental bill.

Notwithstanding, the Trial Court of New York held that under the New Jersey law jurisdiction could not be acquired without service of a new subpœna, and that such service was "an indispensable prerequisite to the rendition of a personal judgment," and therefore dismissed the action brought to enforce the judgment.

Upon the action being carried to the U. S. Supreme Court on a writ of error it was insisted that this finding as to the practice in New Jersey was a finding of fact which the Supreme Court would not review. But the Supreme Court held it was rather a question of law than one of fact, saying:

"It is well settled that exceptions to alleged findings of facts because unsupported by evidence present questions of law reviewable in Courts of error." (540.)

And as the only expert testified that the rules and regulations of the New Jersey Chancery Court were to be found in the Statutes, it was questionable whether his opinion upon the question as to whether the New Jersey Court acquired jurisdiction was competent evidence in the case (541), and that in the absence of statutory direction or reported decision, the Supreme Court was justified in concluding and finding the law to be as declared in the very case in hand when the Chancellor entered final decree.

The opinion of the Chancellor differed from that of the witness, and "his judgment was that, under the laws and practice of the State of New Jersey, the defendant was in his Court subject to its jurisdiction and bound by its decree." (544.)

The Court cites cases showing that it proceeded upon the theory and assumption that the New Jersey Court of Chancery acquired jurisdiction by the appearance of Rigney in the action, and that jurisdiction having attached if any error was committed it was an error in procedure and practice not going to the jurisdiction, which error could only be corrected by appeal in the action and the judgment could not be attached collaterally for such error.

It assumes if jurisdiction were wanting that then the judgment would be void.

The case, too, is in entire conformity with the rule which prevails that this Court will not review findings of fact. It simply

said that whether the New Jersey Court obtained jurisdiction was on the case presented, one of law and not one of fact.

Maynard v. Hill, 125 *U. S.*, 190.

The Legislature of the Territory of Oregon by statute dissolved the bonds of matrimony between a husband and wife. The husband was at that time a resident of the Territory. The wife was left by the husband in Ohio when he went to Oregon, promising to send for her to come to him.

The question as to the validity of this Legislature divorce arose upon a claim to certain lands located in a part of the original territory of Oregon, but which afterwards became a part of Washington Territory. It was held that the legislature divorce was valid as legislature divorces had been granted by parliament and other States for many years. This was upon a divided Court. The force and effect of this decree should not be enlarged by drawing from it any conclusions or deductions not strictly within the letter of the decision. It is at best a border case.

In the first place it is to be noted that Maynard, the husband, was a *bona fide* resident of Oregon, and his wife, whom he left in Ohio, upon a promise to send for her, was constructively also a resident of Oregon, as there had been no separation, and the domicile of the wife is presumed to follow that of the husband, as laid down in *Hunt v. Hunt*, 72 *N. Y.*, and in *Sewell v. Sewell*, 122 *Mass.*, 156. Therefore, when the territorial legislature of Oregon passed the statute divorcing Maynard it simply affected the marriage status of its own citizens and not those of the status of citizens of other States.

Consequently, the question was not presented how far other States would be bound to respect the Oregon statute of divorce had the wife in fact been a *bona fide* resident of a State other than Oregon.

Again, the question before the Court was as to the effect of the Oregon statute within the territorial limits of Oregon itself, not as to how far sister States were bound to respect the Oregon divorce.

It may also be said in addition that the question presented was one of legislative power, acting on the rights and status of its own citizens, not one of the jurisdiction of Courts to summon and determine the rights of citizens of other States, where due process of law is required.

Maynard v. Hill is a case *sui generis*, and can form no precedent for the questions involved in the case now under consideration.

SEVENTH.

The marriage status is not a *res* within the ordinary meaning of that term.

People v. Baker, 76 *N. Y.*, 78–85.
Jones v. Jones, 108 *N. Y.*, 415–424.
Williams v. Williams, 130 *N. Y.*, 199.

Read what Mr. Chief Justice Folger said on this subject in the case of *People v. Baker*. We quote: "It is said that a "judicial proceeding to touch the matrimonial relation of a "citizen of a State, whether the other party to that relation is "or is not also a citizen, is a proceeding *in rem*, or, as it is more "gingerly put, *quasi in rem*. But it was never heard that the "Courts of one State can affect in another State the *rem* there, "not subjected to this process; and over the person of the "owner of which no jurisdiction has been got. Now, if the "matrimonial relation of the one party is the *res* in one State, "is not the matrimonial relation of the other a *res* in another "State? Take the case of a trust, the subject of which is "lands in several States, the trustees all living in one State. "Doubtless the Courts of a State in which the trustees did not "live and never went, but in which were some of the trust "lands, could proceed *in rem* and render a judgment without "personal service of process, which would determine there the "validity of the trust and affect the possession and title of the "lands within the jurisdiction of those Courts; but, it would "be contended, that the judgment would operate upon the "trustees or upon the lands, in other States, so as to affect the "title, or the possession, in those States. It would operate only "on the *rem*, upon which the process of those Courts could "lay hold. And why is not the matrimonial relation of a citi- "zen of New York as it exists in that State, if it is a *res*, as "much exempt from the effect of such a judgment as lands in "that State, and the trusts under which they may be held?"

CHAS. B. WHEELER,

Counsel for Defendant in Error, Buffalo, N. Y.

UNITED STATES SUPREME COURT.

No. 39, O. T. 1900. No. 265, O. T. 1899.

FREDERICK A. BELL, PLAINTIFF IN ERROR,

against

MARY G. BELL, DEFENDANT IN ERROR.

POINTS FOR DEFENDANT IN ERROR IN SUPPORT OF MOTION THAT UPON DECISION OF THIS CASE JUDGMENT MAY BE ENTERED AS OF DATE OF SUBMISSION OF CASE TO COURT ON ARGUMENT.

STATEMENT.

This case came before this Court upon a writ of error directed to the Supreme Court of the State of New York to review a decree or judgment of divorce granted to Mary G. Bell against her husband, Frederick A. Bell.

The case was argued and finally submitted to this Court for decision on the 26th day of April, 1900.

After submission, and while the Court still had the case under advisement, and on the 20th day of May, 1900, the plaintiff in error, Frederick A. Bell, died. The counsel for Mrs. Bell has, by affidavit, made suggestion of the death of Mr. Bell and now moves this Court that upon the decision of the case the Court direct judgment to be entered as of the 26th day of April, 1900, when same was finally taken under advisement. In the supplemental affidavit filed by the counsel for Mrs. Bell, as well as by the return and record before the Court, it appears that in and by the decree of divorce which is now under review, Mr. Bell was adjudged to pay to Mrs. Bell "the sum of three thousand "dollars ($3,000) per annum during the natural life of the said "Mary G. Bell, as and for her support and maintenance, such "payments to begin from the 22d day of December, 1894, and "to be paid in quarterly instalments of seven hundred and "fifty dollars ($750) each at the end of every three months."

(See printed return and record, pages 13 and 14, and also Mr. Wheeler's affidavit made on this motion.)

The judgments below also provided for the payment of three bills of costs, one for $425.94, one for $99.85 and a third for $117.86. (See record and Mr. Wheeler's affidavit.)

It is further shown that no part of the alimony decreed, and no part of the several judgments for costs, have been paid, but the whole remains due, amounting at this date to about the sum of twenty thousand dollars ($20,000).

The payment of these amounts is secured by an undertaking given upon the granting of the writ in this case, which appears in the printed record at pages 88 and 89.

The defendant in error insists that the judgment sought to be reviewed should be affirmed, and that the judgment of affirmance should be entered as of the 26th of April, 1900, when said cause was finally submitted to the Court.

The death of Mr. Bell has abated none of the rights of Mrs. Bell determined by the judgment in her favor.

If the marriage relation of Mr. and Mrs. Bell were alone involved, then as the death of Mr. Bell has terminated that relation, independent of whatever decree this Court might make, it might well follow that this Court would not feel called on under such circumstances to make any disposition of the questions involved in this case.

In addition to the question of the marriage relation there, however, are involved large and valuable property rights amounting at this date to about the sum of twenty thousand dollars ($20,000). If the Pennsylvania divorce, obtained by Mr. Bell, was a bar and defense to this action brought by Mrs. Bell, in the Courts of New York, then the award of alimony and costs was error. If on the other hand, the Pennsylvania divorce was granted without jurisdiction, and therefore void, the judgment for costs and alimony was right.

In matrimonial actions where there has been no trial, the death of either party, as a rule, operates to abate the action.

If, however, a decree has been entered, then no abatement follows.

The theory of abatement after trial and judgment is well expressed in the case of

Carr vs. Rischer, 119 *N. Y.*, 124,

where it was claimed the death of a party sued in an action to recover a penalty, operated to abate an appeal taken after the entry of a judgment. The Court held to the contrary, and said, "The "original wrong was merged in the judgment, and then became "property with all the attributes of a judgment in an action *ex "contractu*. Since the rendition of the judgment the contro- "versy between the parties has been over the judgment, not "over the original wrong, after the reversal of the judgment "there could never be a new trial, because there was no one liv- "ing legally bound to respond for the wrong or who could "legally ask for its redress. The reversal of the judgment did "not for every purpose strike it out of existence as if it had "never had being. It still had a potential existence. The re- "versal was not final. The law gave opportunity by appeal for "its restoration, and this the controversy over the judgment as "property, could be continued. The plaintiff by the appeal "seeks to fasten upon the representatives of the deceased de- "fendant, not responsibility for the original wrong, but, for the "judgment, and she seeks not to recover damages for the wrong, "but to enforce and realize upon the judgment as an asset of "the estate which she represents."

To the same general effect is the case of

Blake vs. Griswold, 104 *N. Y.*, 613.

The rule applies to actions for divorce, and it has been held in a number of well considered cases that notwithstanding the death of a party in an action for divorce, an appeal from the judgment may still be prosecuted by the representatives or successors of the defeated party where the decree of divorce affects property rights.

Danforth vs. Danforth, 111 *Ill.*, 236.
Mead vs. Mead, 1 *Mo. App.*, 247.
Downer vs. Howard, 44 *Wis.*, 82.
Thomas vs. Thomas, 57 *Md.*, 506.
Shafer vs. Shafer, 30 *Mich.*, 163.
Wren vs. Moss, 2 *Gilman* (7 *Mich.*), 72.
Israel vs. Arthur, 6 *Colorado*, 85.

If the legal representatives of a defeated party have the right to prosecute an appeal from a decree in an action for divorce,

because the decree affects property rights, then certainly the converse of the proposition must be true, and the successful party has the right to insist on an affirmance notwithstanding the death of the appellant.

The Court will and should, under such circumstances, take great care to protect the interests and property rights of the successful and injured party. It has done so in the past.

In the case of

Seibley vs. Ingram, 105 *Mich.*, 584,

an absolute divorce was granted the wife, but by the decree the question of alimony was reserved for the further order of the Court. The husband died after the entry of the decree, but the Court, notwithstanding his death, took up the matter and by a supplemental decree upon the foot of the original judgment, provided for permanent alimony to be paid out of the decedent's estate. Holding the action had not abated and that the death of the party did not oust the Court of jurisdiction.

In

Thomas vs. Thomas, 57 *Md.*, 506,

the Court held that while the death of a party to an appeal from a decree of divorce abated the appeal so far as it related to the marriage status, yet that the appeal might be prosecuted for the purpose of determining property rights incident thereto.

In

Danforth vs. Danforth, 111 *Ill.*, 236,

the husband filed his bill for divorce against his wife, and procured a decree in his favor. The wife then entered a motion to set the decree aside for fraud in procuring it. The motion was overruled. She appealed from the order and decree. The appeal was argued and submitted and pending a decision the husband died. It was held his death did not abate the action or appeal, and the Court rendered a judgment in favor of the wife reversing the judgment and directing its entry *nunc pro tunc* as of the date of the submission of the case.

To the same effect is the case of

Mead vs. Mead, 1 *Mo. App.*, 247,

where the defendant, against whom a judgment of divorce was granted, appealed, and died pending a decision, but after argument and submission of the case, and judgment *nunc pro tunc* was ordered.

The judgment for alimony in favor of Mrs. Bell must stand. The death of Mr. Bell could not in any way impair the force and effect of that judgment, if it be free from attack on other grounds.

Carr vs. Rischer, 119 *N. Y.*, 124.
Blake vs. Griswold, 104 *N. Y.*, 613.

In addition to the question of alimony is also involved the question of attorney's lien on the recovery for services rendered.

The question whether a cause of action survives or abates is not a question of procedure, but of right, and when the cause of action does not arise under a law of the United States, depends on the law of the State in which the suit is brought.

Martin vs. Baltimore & Ohio R. R. Co., 151 *U. S.*, 674.
Baltimore & Ohio R. R. Co., 173 *U. S.*, 226.

The right of Mrs. Bell to dower in the real estate of Mr. Bell is also involved, because under the law of the State of New York a woman who had obtained a decree for a divorce *a vinculo matrimonii* for the adultery of her husband is, notwithstanding such divorce, entitled after his death to dower in his estate.

Wait vs. Wait, 4 *Comstock*, 95.
Van Voorhis vs. Brintnall, 23 *Hun*, 260.
Forrest vs. Forrest, 3 *Abb. Pr.*, 144.

It would be a great denial of justice should Mrs. Bell either by the action or inaction of this Court be defeated in the property rights secured by the judgment in her favor.

Therefore this Court should affirm the judgments brought here for review, and in doing so grant this motion.

Where cases have been once argued and submitted to a Court for its disposition, it is the proper practice in the event of the death of a party while the case is under advisement, to enter judgment as of the date of submission.

Mitchell vs. Mitchell, 103 *U. S.*, 62.
Borer vs. Chapman, 119 *U. S.*, 596.
Danforth vs. Danforth, 111 *Ills.*, 236.
Mead vs. Mead, 1 *Mo. App.*, 247.

This has been the uniform practice not only in this Court, but in the Courts of the various States. (See the numerous cases cited in note to the reported case of *Mitchel vs. Overman*, 103 *U. S.*, 62.)

The delay of Court in rendering decision should not prejudice a party's rights.

Counsel for the defendant in error, therefor, respectfully submits that the motion should be granted and judgment on decision of the case be entered as of April 26th, 1900.

The great and far-reaching constitutional question involved also calls for the decision of this case.

CHAS. B. WHEELER,
Counsel for defendant in error,
No. 117 Erie County Saving Bank,
Buffalo, N. Y.

Supreme Court of the United States.

No. 39.—October Term, 1900.

Frederick A. Bell, Plaintiff in Error, *vs.* Mary G. Bell. } In error to the Supreme Court of the State of New York.

This was an action brought December 22, 1894, in the Supreme Court for the county of Erie and State of New York, by Mary G. Bell against Frederick A. Bell, for a divorce from the bond of matrimony for his adultery at Buffalo in the county of Erie in April and May 1890, and for alimony.

The defendant appeared in the case, and pleaded a decree of divorce from the bond of matrimony, obtained by him January 8, 1895, in the court of common pleas for Jefferson County in the State of Pennsylvania, for her desertion.

The plaintiff replied, denying that the court in Pennsylvania had any jurisdiction to grant the decree; and alleging that no process in the suit there was ever served on her, and that neither she nor her husband ever was or became a resident or citizen of the State of Pennsylvania.

The present action was referred to a referee, who found the following facts: The parties were married at Bloomington in the State of Illinois on January 24, 1878, and thereafter lived together as husband and wife at Rochester, and afterwards at Buffalo, in the State of New York. In August, 1882, the plaintiff went to Bloomington on a visit to her mother. In her absence, the defendant packed up her wearing apparel and other property in trunks, and had them put in the stable, preparatory to sending them to her at Bloomington. In September, 1882, the plaintiff, accompanied by her mother, returned to the defendant's house, stayed there three or four days, and then left, with her mother, for Bloomington; and since then the plaintiff and defendant have not lived together, and she has always claimed her residence as being at Buffalo.

On January 8, 1895, the court of common pleas of Jefferson County in the State of Pennsylvania granted to the husband, on his petition filed April 9, 1894, alleging that he was and had been for a year a citizen of that State and a resident of that county, a decree of divorce from the bond of matrimony for her desertion, which, under the laws of Pennsylvania, was a ground for dissolving marriage. The subpœna in that action was not served upon the wife, but she was served by publication according to the laws of Pennsylvania, and she received through the mail a copy of the

subpœna and of a notice of the examiner that he would attend to the duties of his appointment on December 14, 1894, at his office in Brookville in Jefferson County. She did not appear in person or by attorney, and judgment was rendered against her by default.

At the time of the beginning of that action, and of the rendering of that decree, the wife was a resident of the State of New York, and the husband was not a *bona fide* resident of the State of Pennsylvania. On January 31, 1894, the husband and his sister presented a petition, upon oath, to the surrogate of Erie County for the probate of the will of their mother, in which he was described as residing at Buffalo in the county of Erie and State of New York. No evidence was offered to show that he actually changed his domicil from New York to Pennsylvania.

The referee also found the husband's adultery as alleged; and reported that the wife should have judgment for a divorce from the bond of matrimony, and for alimony in the sum of $3000 during her life, from the commencement of this action, payable quarterly, and for costs. The court confirmed his report, and rendered judgment accordingly for a divorce, alimony and costs. That judgment was affirmed by the general term, and by the Court of Appeals. 4 N. Y. App. Div. 527; 157 N. Y. 719.

The defendant sued out this writ of error, upon the ground that the judgment below did not give full faith and credit to the judgment in Pennsylvania, as required by the Constitution and laws of the United States.

After the argument of the case in this court, the defendant died; and the plaintiff moved that judgment be entered *nunc pro tunc*.

[April 15, 1901.]

Mr. Justice GRAY, after stating the case as above, delivered the opinion of the Court.

The question in this case is of the validity of the divorce obtained by the husband in Pennsylvania. No valid divorce from the bond of matrimony can be decreed on constructive service by the courts of a State in which neither party is domiciled. And by the law of Pennsylvania every petitioner for a divorce must have had a *bona fide* residence within the State for one year next before the filing of the petition. Penn. Stats. March 13, 1815, c. 109, § 11; May 5, 1854, c. 629, § 2; *Hollister* v. *Hollister*, 6 Penn. St. 449. The recital in the proceedings in Pennsylvania of the facts necessary to show jurisdiction may be contradicted. *Thompson* v. *Whitman*, 18 Wall. 457. The referee in this case has not only found generally that at the time of those proceedings the wife was a resident of the State of New York, and the husband was not a *bona fide* resident of Pennsylvania; but has also found that on January 31, 1894, some ten weeks before he filed his petition in Pennsylvania, he described himself,

under oath, in a petition for the probate of a will in Erie County in the State of New York, as a resident of that county; and that no evidence was offered that he actually changed his domicil from New York to Pennsylvania. Upon this record, therefore, the court in Pennsylvania had no jurisdiction of the husband's suit for divorce, because neither party had a domicil in Pennsylvania, and the decree of divorce was entitled to no faith and credit in New York or in any other State. *Leith* v. *Leith*, (1859) 39 N. H. 20; *People* v. *Dawell*, (1872) 25 Michigan, 247; *Sewall* v. *Sewall*, (1877) 122 Mass. 156; *Litowitch* v. *Litowitch*, (1878) 19 Kansas, 451; *Van Fossen* v. *State*, (1881) 37 Ohio State, 317; *Gregory* v. *Gregory*, (1886) 78 Maine, 187; *Dunham* v. *Dunham*, (1896) 162 Illinois, 589; *Thelen* v. *Thelen*, (1899) 75 Minnesota, 433; *Magowan* v. *Magowan*, (1899) 12 Dickinson, (57 N. J. Eq.) 322.

The death of the husband, since this case was argued, of itself terminates the marriage relation, and, if nothing more had been involved in the judgment below, would have abated the writ of error, because the whole subject of litigation would be at an end, and no power can dissolve a marriage which has already been dissolved by act of God. *Stanhope* v. *Stanhope*, (1886) 11 Prob. Div. 103, 111. But the judgment below, rendered after appearance and answer of the husband, is not only for a divorce, but for a large sum of alimony, and for costs. The wife's rights to such alimony and costs, though depending on the same grounds as the divorce, are not impaired by the husband's death, should not be affected by the delay in entering judgment here while this court has held the case under advisement, and may be preserved by entering judgment *nunc pro tunc*, as of the day when it was argued. *Downer* v. *Howard*, (1878) 44 Wisconsin, 82; *Francis* v. *Francis*, (1879) 31 Grattan, 283; *Danforth* v. *Danforth*, (1884) 111 Illinois, 236; *Mitchell* v. *Overman*, (1880) 103 U. S. 62.

Judgment affirmed, nunc pro tunc, as of April 26, 1900.

True copy.

Test:

Clerk Supreme Court, U. S.